

DAVID S. GIBSON, MBA, MRC, - 09/19/2018

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1 There were present at the taking of this 2 deposition the following counsel: 3 RAPORPORT LAW OFFICES, P.C., by 4 MR. KEVIN D. KOJS 5 20 North Clark Street Suite 3500 Chicago, Illinois 60602 (312) 327-9880 6 kkojs@rapoportlaw.com 7 on behalf of the Plaintiffs; 8 BORGELT POWELL PETERSON & FRAUEN, S.C. by MS. BARBARA A. O'BRIEN 1243 North 10th Street Suite 300 Milwaukee, Wisconsin 53205 (414) 276-3600 11 bobrien@borgelt.com 12 on behalf of Defendant Capstan Corporation; (Appeared via telephone) 13 JOHNSON KILLEEN & SELLER by MR. DARYL A. FUCHIHARA 800 Wells Fargo Center 230 West Superior Street Duluth, Minnesota 55802 (218) 722-6331 16 dfuchihara@duluthlaw.com 17 on behalf of Defendant Fraser Shipyards, Inc.; 19 TUCKER ELLIS, LLP by MR. JOSEPH A. MANNO 950 Main Avenue Suite 1100 21 Cleveland, Ohio 44113 (216) 696-4465 22 joseph.manno@tuckerellis.com 23 on behalf of Defendant The Interlake Steamship Company.	1 DEPOSITION OF DAVID S. GIBSON, MBA, MRC 2 TAKEN SEPTEMBER 19, 2018 3 4 EXAMINATION BY PAGE 5 Ms. Barbara A. O'Brien 5, 121, 168, 198 6 Mr. Joseph A. Manno 92, 148, 191 7 8 EXHIBITS PAGE 9 10 DEPOSITION EXHIBIT 1 5 Curriculum vitae 11 DEPOSITION EXHIBIT 2 8 Testimony Report 1-1-14 through 8-22-18 12 DEPOSITION EXHIBIT 3 13 Gibson File Review Notes 14 DEPOSITION EXHIBIT 4 13 Gibson File Review Notes 15 DEPOSITION EXHIBIT 5 13 Gibson File Review Notes 16 DEPOSITION EXHIBIT 6 36 Evaluatee Interview Form 17 DEPOSITION EXHIBIT 7 49 Uses and Limitations of CPS Data on Work Disability 18 DEPOSITION EXHIBIT 8 60 Evaluatee Interview Form 22 DEPOSITION EXHIBIT 9 75 Vocational Economic Assessment 24 for John Perrin 25
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1 EXHIBITS (Continued) PAGE 2 3 DEPOSITION EXHIBIT 10 121 Evaluatee Interview Form 4 5 DEPOSITION EXHIBIT 11 122 Mississippi Permanent School Record Grades K-12 for Donald Holden 6 7 DEPOSITION EXHIBIT 12 139 Vocational Economic Assessment For Donald Holden 8 9 DEPOSITION EXHIBIT 13 148 U.S. Individual Income Tax Return 2016 for Donald Holden 10 11 DEPOSITION EXHIBIT 14 150 E-mail from Mary Reid of Rapoport Law Offices to David Gibson dated July 26, 2018 12 13 DEPOSITION EXHIBIT 15 158 Memorial Medical Oncology of Cedar Lake record for Donald Holden 14 15 DEPOSITION EXHIBIT 16 159 Memorial Physician Clinics Neurology Pass Road office/clinical notes for Donald Holden 16 17 DEPOSITION EXHIBIT 17 168 Vocational Economics Medical Care Cost Summary for Donald Holden 18 19 DEPOSITION EXHIBIT 18 174 School District of Maple, Maple, Wisconsin records for Brandon Pekkala	1 DAVID S. GIBSON, MBA, MRC, 2 called as a witness herein, having been first duly 3 sworn, was examined upon oral interrogatories and 4 testified as follows: 5 EXAMINATION CONDUCTED BY MS. O'BRIEN: 6 Q Mr. Gibson, my name is Barb O'Brien. I 7 represent Capstan Corporation in this case. And so I 8 will be asking you questions, and I'm sure some others 9 will as well. But, first, if we can start with your 10 name. 11 A Okay. My name is David S. Gibson. That's 12 spelled G-I-B-S-O-N. 13 Q And I know you've given a lot of testimony, so I 14 don't have to tell you about the rules of the 15 deposition, correct? 16 A I believe that's true. 17 Q Okay. You've been designated as an expert in 18 this case in vocational rehabilitation? 19 A And economics, yes. 20 Q And economics. And that is with regard to 21 Donald Holden, Brandon Pekkala, and John Perrin? 22 A Correct. 23 (Document marked as Deposition Exhibit 1 for identification.) 24 25 Q And just for the record, I want to show you

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<p>1 what's been marked Exhibit 1. Is that a copy of your      2 CV?</p> <p>3 A It is. And it is the most current and      4 up-to-date version.</p> <p>5 Q Do you hold any professional licenses or      6 certifications?</p> <p>7 A No.</p> <p>8 Q I noted that in 1979 you were a certified public      9 accountant for the state of Illinois.</p> <p>10 A Yes.</p> <p>11 Q Have you ever practiced public accounting?</p> <p>12 A No.</p> <p>13 Q Do you hold any kind of academic appointments?</p> <p>14 A I do not.</p> <p>15 Q The Master's that you hold, that's from the      16 University of Kentucky, College of Education?</p> <p>17 A The second Master's, yes.</p> <p>18 Q Okay. And that's for rehabilitation counseling?</p> <p>19 A Yes.</p> <p>20 Q You obtained that in 2007?</p> <p>21 A Yes.</p> <p>22 Q And was that attending classes at the university      23 or was that an online program?</p> <p>24 A It was a distance program; somewhat online,      25 somewhat videoconferencing, and somewhat</p>	<p>1 teleconferencing.</p> <p>2 Q So it wasn't ever actually going to the      3 university for classes?</p> <p>4 A That's right.</p> <p>5 Q Was that on a part-time --</p> <p>6 A No, actually, it's a full-time program. It's a      7 program for people that already are in the field of      8 rehabilitation counseling, and they knock out any summer      9 breaks or spring breaks and put it within about a      10 year-and-a-half instead of a two-year program.</p> <p>11 Q And so do you forego some of the classes that      12 others might be required to take because of the --      13 you're already in the business of rehabilitation      14 counseling?</p> <p>15 A No.</p> <p>16 Q Have you ever had any medical training at all?</p> <p>17 A Not that at all qualifies me as a medical      18 expert. Rehabilitation counseling does include some      19 training in the medical and psychosocial impacts of a      20 disability, but I can't diagnose or prescribe or      21 anything like that.</p> <p>22 Q What does that allow you to do?</p> <p>23 A It just helps me to evaluate the limitations      24 that arise from a disability and how they interplay or      25 interfere with a person's ability to work.</p>
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<p>1 Q And so do you actually -- As part of your      2 position with regard to this case as an expert, are you      3 actually involved in evaluating the limitations?</p> <p>4 A Only by evaluating -- It's evaluating as      5 identified by a medical professional or      6 neuropsychological professionals, as may be the case in      7 this case. So I'm not looking at the limitations that      8 Dr. Santa Maria or others may have identified in      9 evaluating how they impact the requirements of -- within      10 a competitive job market.</p> <p>11 Q Okay. We'll get into that a little bit further,      12 but let me just show you what has been marked Exhibit 2.      13 (Document marked as Deposition      14 Exhibit 2 for identification.)</p> <p>15 Q Is that a list of your testimony for the last      16 four years?</p> <p>17 A Yes. Actually, it's getting close to five years      18 actually.</p> <p>19 Q So it's from January of 2014 through August of      20 2018?</p> <p>21 A Correct.</p> <p>22 Q Okay. And this contains both depositions and      23 court testimony?</p> <p>24 A Yes, and I believe there will probably be a      25 couple of arbitrations in there too.</p>	<p>1 Q Over the years how many depositions have you      2 given?</p> <p>3 A In total, it's about 750.</p> <p>4 Q How about in the last month?</p> <p>5 A I don't know. I would say in a typical year now      6 I give about 65 to 70 depositions, but it will vary      7 widely from month to month.</p> <p>8 Q Okay. So can you tell me in say September how      9 many are we on now?</p> <p>10 A I don't know.</p> <p>11 Q Did you do any this week already?</p> <p>12 A Yes, I had one this morning.</p> <p>13 Q And how about any earlier this week?</p> <p>14 A Yes. Well, this one -- Oh, this doesn't have      15 anything -- This is September. I believe I had at least      16 two before this one.</p> <p>17 Q And how about last week? Did you have any      18 depositions last week?</p> <p>19 A I'm sorry, yes, the two involved -- So I had one      20 today and then at least two last week is what I'm      21 saying.</p> <p>22 Q So three this month?</p> <p>23 A Yes.</p> <p>24 Q Any other ones for the Rapoport Law Firm this      25 month?</p>

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1	A No.	valuation.
2	Q You have been retained by the Rapoport Law Firm	2 Currently do you have any other cases pending
3	in the past?	3 with the Rapoport Law Firm?
4	A I have.	4 A I don't know. I've done cases for them within
5	Q On how many occasions?	5 the last year, but I can't say whether those cases are
6	A I don't know the exact number. On an annual	6 open or closed.
7	basis it would probably range anywhere from two to five	7 Q And how many within the last year?
8	times per year.	8 A Probably -- Excluding these three, probably
9	Q And how long have you been working for their	9 another three or four.
10	firm?	10 Q And so would the three that are in this case
11	A I believe the first time I did any work with	11 constitute three cases or is it one case for you?
12	them would have been in 2007.	12 A To me, it's three because it's three different
13	Q So about 11 years?	13 analyses.
14	A Approximately.	14 Q Do you work mainly for plaintiffs firms or
15	Q Okay. So somewhere between 22 and 55 times	15 defense firms or how does that work?
16	you've been retained by the Rapoport firm?	16 A I'm hired most of the time by plaintiff.
17	A Yes.	17 Probably about 85 percent of the time.
18	Q And on each occasion is it for doing the very	18 Q Do you work for anyone else other than
19	thing that you're doing in this particular case?	19 plaintiffs or defense lawyers?
20	A No. The majority of them do involve loss of	20 A No, everything -- Excuse me. Everything I do is
21	lifetime earnings. I'm fairly sure there's a couple	21 litigation related and it's all retained by attorneys.
22	that only involved maybe a lifecare plan, which I did in	22 Q Have you worked for any firms up in Milwaukee?
23	Mr. Holden's case, looking at the present value of a	23 A I've been involved in cases in Milwaukee, but I
24	lifecare plan. But I believe that some of their cases	24 don't believe my retention was by a Milwaukee firm.
25	may have involved only that and no other form of	25 And I've been retained by people in the -- I
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1	take that back. I have been retained by persons in	1 that we generated for the cases, and it would have been
2	Milwaukee. I'm trying to remember his name. There's a	2 the same for all three, was done on June 14th of 2018.
3	case I did that just settled about a month ago, but I	3 So that's usually within one day after we first learn
4	can't recall the attorney's name.	4 about the case.
5	Q Do you know the firm?	5 Q And you are referring now to something at the
6	A No.	6 top called Gibson File Review Notes; is that true?
7	Q Have you -- strike that.	7 A I am.
8	Was that a case that was venued in Wisconsin?	8 Q Okay. So can we mark that?
9	A Yes.	9 A There's three different versions you realize.
10	Q And what court was that?	10 So one for each of the three plaintiffs.
11	A I don't recall. I believe -- I know he was from	11 Q Thanks. So can we mark your copies? Do you
12	Milwaukee, but I don't recall whether it was a Milwaukee	12 have --
13	case or not.	13 A Sure.
14	Q Did you testify in that case either by	14 Q Let's mark your copies and then you can refer to
15	deposition or court?	15 them.
16	A By deposition, but the deposition would have	16 A So mark them each individually?
17	been done here in Chicago. I did not go to the trial.	17 Q Please.
18	Q And so would that be listed in Exhibit No. 2?	18 (Documents marked as Deposition
19	A It would.	19 Exhibit 3, Exhibit 4, and Exhibit 5
20	Q Do you know when you were retained in this case?	20 for identification.)
21	And when I say this case, I'm referring to all three of	21 A Shall I identify them?
22	them. So if there's different --	22 Q Please.
23	A All three would have been the same.	23 A So these are -- First of all, the file review
24	Q All three would have been the same?	24 notes is a cheat sheet essentially that I prepare when
25	A Yes. And I'm just noting that the fee agreement	25 I'm getting ready for the deposition that lists out all

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1 the contents of my file.	1 agreement for the case. And under the Notes section
2 The set that's marked Exhibit No. 3 pertains to	2 you'll see a date of June 14th of 2018. That's the date
3 Mr. Perrin; 4 pertains to Mr. Pekkala; and 5 pertains to	3 that that fee agreement was generated.
4 Mr. Holden.	
5 Q Okay. So what you've done is gone through your	4 Q Okay. And that fee agreement, does that specify
6 file and come up with notes for giving this deposition	5 what you will be charging in this case?
7 today?	6 A Yes.
8 A Yes.	7 Q What are your charges?
9 Q Okay. Did you prepare these Gibson file review	8 A For all three of them there's a loss of earnings
10 notes?	9 analysis, and that will be constant for all three, at
11 A I did.	10 \$5,200 a piece. Then for Mr. Pekkala and Mr. Perrin
12 Q And do you actually go through your file to pull	11 there's a loss of pension benefits in addition to the
13 out those notes and prepare this chart that you have	12 base earnings. That was billed at \$1,100 each. And for
14 before us in these Exhibits 3, 4, and 5?	13 Mr. Holden there's a charge for the analysis of the
15 A Yes.	14 present value of his lifecare plan, and that was billed
16 Q Do you have any assistance with that?	15 at \$2,500.
17 A No.	16 That any work after the dates of the reports I
18 Q When I asked you when you were retained in this	17 bill at an hourly rate, which is consistent across all
19 case, what specifically did you refer to on these review	18 three, at 520 per hour, with the exception of testimony
20 notes?	19 time, which is 720 per hour. Oh, which reminds me, you
21 A I would have gone -- I'm looking at Exhibit 3	20 owe me. He said you're paying for all three of them.
22 right now for Mr. Perrin. All three of them will be	
23 similar, but the page numbers will be different.	21 Q I'm not. I'm paying for two.
24 But this one, I'm going to page 5, which would	22 A Take your time.
25 be the last set of documents, and in there is the fee	23 Q Do you have any record of the time that you've
	24 spent in this case besides the flat fees?
	25 A No. For the generation of the report, the flat
Page 16	Page 17
1 fee covers all the work up until the report goes out the	1 A Correct.
2 door. So I don't track my time until that point. It's	2 Q And then you have spent some additional time
3 only after that point, which would include the	3 other than preparing these reports and everything that's
4 preparation for the deposition, that I would be billing	4 included in that 5,300 or 1,100 or 2,500, and you've
5 by the hour.	5 been billing out for that time?
6 I don't believe there's been any updates. Yes,	6 A Correct.
7 I'll correct that. There were two small updates that we	7 Q Do you have an itemization of how much that time
8 generated; one for Mr. Perrin after we received Dr.	8 is?
9 Leitch's report, and one for Mr. Holden after we	9 A Yes, I said the accumulating time, but I've not
10 received his W2s for 2014.	10 billed it yet. So the time I spent preparing for the
11 Q So just so I understand, is it \$5,200 flat fee;	11 deposition won't be billed until after the deposition is
12 is that what it is for the report?	12 over and then I'll bill it all together.
13 A Yes.	13 So the time has been accumulated. I can't tell
14 Q Okay. So you have 5,200 for Holden?	14 you exactly how much it is, but I would estimate for
15 A Yes.	15 each case the preparation time was between
16 Q And then an additional for the lifecare plan of	16 two-and-a-half and three hours.
17 2,500?	
18 A Correct.	17 Q Okay. And you billed that out at 580 did you
19 Q So with that, we are up to, what, 7,700?	18 say?
20 A Correct.	19 A 520.
21 Q Okay. And then for Mr. Perrin you have 5,200,	20 Q 520, okay. So roughly another \$1,500, something
22 plus an additional 1,100 for doing his pension benefits.	21 like that, a thousand to \$1,500?
23 And so that would be 6,300?	22 A Yes.
24 A Correct.	23 Q Do you anticipate doing any other work in this
25 Q And the same for Mr. Pekkala, 6,300?	24 case?
	25 A As I sit here, I'm not aware of other work that

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<p style="text-align: right;">Page 18</p> <p>1 will be done, but it's customary that if there's 2 depositions of some of the other experts, I may be asked 3 to review that to see if it changes my opinion.</p> <p>4 Q And have you been asked to come to trial?</p> <p>5 A I haven't been explicitly asked, but that's 6 generally what I do for the vast majority of my cases.</p> <p>7 Q Are you aware when this case goes to trial?</p> <p>8 A Most likely my case manager is. I don't control 9 my calendar myself, but I'm sure it's on the calendar.</p> <p>10 Q So what did you do for purposes of preparing for 11 your deposition today?</p> <p>12 A I basically reviewed the contents of my file 13 and, as I do so, prepare exhibits 3 through 5.</p> <p>14 Q So do you have a computer up in front of you, 15 you're looking at the file and you're putting in 16 information as you do that?</p> <p>17 A Yes.</p> <p>18 Q Okay. I noticed when I was going through your 19 files there's certain things that are highlighted either 20 in yellow or something like that. Is that something 21 that you've done?</p> <p>22 A It's done either by my case manager, who's also 23 my wife, Margaret Gibson, or by me. She reviews the 24 documents usually before I do. So she'll probably have 25 the majority of the highlighting.</p>	<p style="text-align: right;">Page 19</p> <p>1 Q Okay. And so when you went through to review 2 for your deposition today, do you review the highlighted 3 portions or do you go through the whole thing?</p> <p>4 A It depends on the document. For most of the 5 documents I will go a little bit beyond the highlighted 6 items. I guess it depends on how detailed the document 7 is.</p> <p>8 Like the -- I guess an example would be the 9 summary plan description for the pension plan that 10 Mr. Perrin and Mr. Pekkala are covered by. That's 11 something I would have reviewed before I know the 12 boilerplate language that those plans include and I will 13 have skimmed over some of the sections that were 14 highlighted. For things like Dr. Santa Maria's report, 15 however, I will have spent some more time going -- 16 possibly reading the highlights.</p> <p>17 Q What are you looking for when you're scanning 18 the documents in your file?</p> <p>19 A Again, it depends on the document. There's I 20 guess a few different areas I'm looking for. One is 21 ways of quantifying their earning capacity. And tax 22 returns I'd be looking at, information that deals with 23 their earnings and with their employee expenses that 24 they have.</p> <p>25 For medical opinions, being medical reports --</p>
<p style="text-align: right;">Page 20</p> <p>1 I don't have any depositions at this point -- I'm 2 looking for identification of permanent limitations that 3 that person has that I will use in my analysis of how it 4 impacts their worklife expectancy or earning capacity. 5 I'm trying to think. Those are the two main 6 types of documents I'm looking at. They deal with 7 earning capacity or with limitations.</p> <p>8 Q Did you meet with plaintiffs' counsel in this 9 case prior to your depositions?</p> <p>10 A I did.</p> <p>11 Q What -- Sorry.</p> <p>12 A I met about 30 minutes before the dep started.</p> <p>13 Q And what was the purpose for that?</p> <p>14 A Really not too much. I'm just trying to think. 15 Just confirming that there's nothing new that either of 16 us had. And I can't say that either of us provided 17 anything of substantive news to the other side.</p> <p>18 Q Do you do that before every deposition with the 19 Rapoport firm?</p> <p>20 A I believe so. There are some firms where they 21 don't ask for a pre-dep, but I believe I always do for 22 the Rapoport firm.</p> <p>23 Q And do you charge them for that?</p> <p>24 A Yes, that's at the 520 per hour.</p> <p>25 Q So it would have been about 260 for your</p>	<p style="text-align: right;">Page 21</p> <p>1 meeting?</p> <p>2 A Yes.</p> <p>3 Q Did you make any notes of your conversations?</p> <p>4 A No.</p> <p>5 Q How do you approach a case? Explain to me when 6 a case comes in to you, what do you do?</p> <p>7 A First of all, by case I'll assume that you're 8 limiting it to a loss of earnings analysis due to 9 disability?</p> <p>10 Q Yes.</p> <p>11 A Okay. So there I'm, first of all, looking early 12 on as to whether there's a permanent limitation that the 13 person has sustained that may impact the kind or amount 14 of work that they can do in the future.</p> <p>15 Q So what do you look for when you're looking for 16 a permanent limitation?</p> <p>17 A I'm looking for some description of what their 18 limitation is, preferably and ideally in the form of a 19 medical neuropsychological or psychiatric expert that 20 talks about the limitation.</p> <p>21 And there I'm talking about a functional 22 limitation, not necessarily a work restriction, but a 23 description of like fingering, handling, cognitive 24 functions, various functions like that, that could 25 interplay or interfere with the person's ability to do</p>

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<p>1 certain jobs in the labor market.</p> <p>2 Shall I go on?</p> <p>3 Q So let me just follow up with a question. So</p> <p>4 does that mean that you review reports that might have</p> <p>5 that information or medical records that might have that</p> <p>6 information?</p> <p>7 A Usually not medical records. Medical records</p> <p>8 rarely talk about opinions on permanent limitations. So</p> <p>9 they usually document very well how the person's being</p> <p>10 treated and giving me their blood pressure, their heart</p> <p>11 rate, and all the other stuff, but it really doesn't</p> <p>12 talk about the limitation that's evolved from the</p> <p>13 subject injury.</p> <p>14 So usually what I'm looking for is a medical</p> <p>15 report or a deposition or sometimes a disclosure.</p> <p>16 Q In this case did you review any medical reports</p> <p>17 from anybody other than a hired plaintiff's doctor or</p> <p>18 medical provider?</p> <p>19 A I'm not sure of Dr. Leitch's affiliation,</p> <p>20 whether she was retained by the plaintiff or not.</p> <p>21 Q She has been.</p> <p>22 A Okay. No, I did not.</p> <p>23 Q Okay. So in determining at least in these three</p> <p>24 individuals their permanent limitations, you relied upon</p> <p>25 solely the medical reports from the hired doctors by the</p>	<p>1 plaintiffs' counsel?</p> <p>2 A Yes.</p> <p>3 Q What is the next thing that you do?</p> <p>4 A If that's -- if I'm confident that there is some</p> <p>5 form of permanent limitation there, then I'll proceed</p> <p>6 with the case, to analyze the case. I don't know if you</p> <p>7 want me to get into the minutia about getting all the</p> <p>8 documents in, but I'm focusing more on developing the</p> <p>9 opinion.</p> <p>10 Okay. So to analyze the case, I'm looking to</p> <p>11 really ask two questions: How much the person will make</p> <p>12 and how long they will earn it. So annual earning</p> <p>13 capacity and worklife expectancy. And I'm looking to</p> <p>14 analyze both of those questions before the subject event</p> <p>15 and given the limitations that have evolved from the</p> <p>16 subject event and whether those two have changed.</p> <p>17 Once I've got those two key pieces of</p> <p>18 information, I could project lifetime earnings</p> <p>19 pre-injury, lifetime earnings post-injury and state them</p> <p>20 in present cash value terms and find the difference</p> <p>21 between the two and project the loss.</p> <p>22 Q In all cases is your present value the same as</p> <p>23 what the actual value is?</p> <p>24 A No. I think what you're asking me is, is my</p> <p>25 present value always using a pure offset --</p>
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<p>1 Q Correct.</p> <p>2 A -- and not a discount rate of zero percent?</p> <p>3 And for the loss of earnings, base earnings,</p> <p>4 yes. But for loss of pension benefits, if you'll note,</p> <p>5 that's not true. For medical care costs that's not</p> <p>6 true.</p> <p>7 Q But for loss of earnings you don't really have</p> <p>8 to do a present value because it's actually what you</p> <p>9 calculate for the loss of earnings?</p> <p>10 A I could do it without computing present value,</p> <p>11 but I actually do compute growth rates and discount</p> <p>12 rates to come to my present value.</p> <p>13 Q 1 percent and 1 percent?</p> <p>14 A Yes. You've been reading my reports, or</p> <p>15 depositions.</p> <p>16 Q So you've talked about how you go about doing</p> <p>17 the process. What information do you like to have to</p> <p>18 get that or to reach that process?</p> <p>19 A On the earnings side, the how much side,</p> <p>20 information that helps quantify or observe historical</p> <p>21 earnings. And here I'm assuming that we're talking</p> <p>22 about a mature worker. I do child cases also where that</p> <p>23 obviously doesn't come into play.</p> <p>24 But observed earnings from the past,</p> <p>25 documentation that talks about the pension and/or fringe</p>	<p>1 benefits that the person had, information about the</p> <p>2 person's overall educational background or skills that</p> <p>3 they bring into the labor market.</p> <p>4 Then for the limitation side of the equation</p> <p>5 that impacts how those things may change in the future,</p> <p>6 I look for either medical reports, depositions of</p> <p>7 medical experts, excuse me, or disclosures of expert</p> <p>8 opinions.</p> <p>9 Q You said that one of the things you look at is</p> <p>10 the skills that they bring into the marketplace?</p> <p>11 A Yes.</p> <p>12 Q In these three individuals, what skills did they</p> <p>13 bring to the marketplace?</p> <p>14 A Well, with Mr. Pekkala and Mr. Perrin, now at</p> <p>15 least, both of them being journeymen boilermakers. So</p> <p>16 they're highly skilled workers that have been trained</p> <p>17 and recognized within their union as having those</p> <p>18 skills, and that gives them an entry card into a lot of</p> <p>19 different jobs.</p> <p>20 With Mr. -- Oh, and for both of them they have</p> <p>21 their level of education, which is also something that</p> <p>22 leads them into that area.</p> <p>23 With Mr. Holden, who is obviously the different</p> <p>24 player in this arena, I have his work history that</p> <p>25 demonstrates some welding abilities and being kind of a</p>

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1    jack-of-all trades who's done multiple different jobs 2    depending upon what's available when he's in need of 3    employment, as well as his educational history, which is 4    at a lesser degree than the other two.	1    abilities to continue doing that work and to continue to 2    worklife expectancies along that line.
5    Q    Did the skills of being a journeyman have 6    anything to do other than with the amount of money that 7    they were making?	3    Q    How does it play into that?
8    A    Yes, journeymen -- Being a journeyman recognizes 9    that they've completed their apprenticeship program and 10   completed it satisfactorily. So it shows that they're 11   not just boilermakers, welders, that they are -- It's 12   like being a licensed professional in an area rather 13   than just that professional. It's a credential that 14   they carry with them that helps demonstrate their 15   abilities.	4    A    It demonstrates that they have the entree into 5    that market, that they have ongoing employment in that 6    market, and that they're in demand in that market.
16   Q    So how does that play into your assessment then?	7    Q    So how do you use that in your assessment other 8    than for using their wages?
17   A    Well, for them it plays in through the 18   measurement of their earnings through the wage scale 19   that they realized through being a journeyman welder, 20   pipefitter in Boilermaker's Local 647.	9    A    I use it two different ways, both of them with 10   regard to worklife expectancy. One, to show that they 11   should have an unimpaired worklife expectancy without 12   injury from any source. And then the other is that even 13   given the injury that they've sustained from the lead 14   exposure, that they still have a very high worklife 15   expectancy that is only reduced slightly from where it 16   would have been beforehand.
21   Q    So the amount of money they make?	17   Q    So when you're assessing their worklife 18   expectancy and the fact that they're journeymen, you 19   assume that they won't have any kind of disability in 20   the future; is that what I understand?
22   A    Yes.	21   A    There's -- No. I do assume that there's no 22   ongoing disability had this not happened. I don't 23   assume some intervening event that's come into play. 24   But that doesn't come from being a journeyman. That 25   just comes from the fact that I don't assume an injury
23   Q    But does it play into anything else other than 24   the amount of money they make?	
25   A    It plays into the overall assessment of their	
Page 28	Page 29
1    coming on to somebody at some point in the future.	1    Q    Do you ever do that?
2    Q    Do you do any kind of interview of the 3    individuals?	2    A    Yes, in some cases. I mean, in some cases just 3    that the person is conveniently located and then it's 4    nice to be able to sit down with them to conduct the 5    interview. But I'm not conducting a medical 6    examination. I don't need to see them in person.
4    A    Yes, I interview all three of them.	7    There are sometimes though where it's to my 8    benefit to administer a wide range achievement test or 9    some type of test. But in this case they all have 10   extensive neuropsychological testing that would be far 11   beyond anything that I could do.
5    Q    And is that a personal interview?	12   Q    Would you still have liked to have done it just 13   to get your own assessment?
6    A    It's telephonic.	14   A    No, I can't say it would change my opinion at 15   all.
7    Q    Do you call them?	16   Q    Okay. So did you do any of your own testing to 17   determine any work ability of these individuals?
8    A    Yes.	18   A    No.
9    Q    And how long do you spend talking with them?	19   Q    All the testing that you relied upon would have 20   been done by the paid plaintiffs' experts?
10   A    Approximately one hour.	21   A    Yes.
11   Q    How did your conversation go with Mr. Holden?	22   Q    Did you do anything to assess credibility of any 23   of these plaintiffs?
12   A    Difficult. He was resisting answering questions 13   that he thought he already answered for other people 14   before.	24   A    No, no. I mean, I don't know that I'm really 25   relying on credibility that much. I'm looking at actual
15   Q    Were you able to understand him?	
16   A    That was also difficult, but eventually, yes. 17   And that was another part, that he resisted repeating 18   his answers.	
19   Q    Did you take longer with him?	
20   A    Most likely. I can't tell you exactly how long 21   I did, but given that difficulty, it would have taken 22   longer.	
23   Q    You weren't able to observe them in person at 24   all, right?	
25   A    No.	

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1    earnings that they've had in the past and their actual 2    work history and projecting that forward.	1    A   I do. 2    Q <b>And what kind of records are those?</b> 3    A   I'm trying to think. There's a generic form 4    that I send to the attorneys that they sometimes send 5    back. Let me see if I've got. Yes, I do. 6    I'm looking on Mr. Holden's case.
3    Q <b>For instance, do you ever look to see what</b> 4 <b>they've told you compared to what might be in the</b> 5 <b>records that have been provided to you to see if it's</b> 6 <b>credible or truthful?</b>	7    Q <b>Okay.</b> 8    A   And -- Oh, you kept it in administrative 9    documents? Did you keep it how I had it?
7    A   I do, but, to my recollection, I didn't see 8    anything that I found incredible. For instance, when I 9    interviewed them, there's a part -- And you've seen my 10   entire file, right?	10   Q <b>I don't have all of them.</b> 11   A   There's one in there that looks like this, if 12   that helps you at all. I print two pages per side. 13   That's it. Yes.
11   Q <b>Yes. And we're going to go through those forms.</b> 12   A   So in my interview form there's a page on there 13   where I ask about their limitations. And when I obtain 14   that information from them, I'm considering that in the 15   light of what I understand to be the medical opinions of 16   what their limitations are.	14   So this would be an example of what I would 15   send. Mr. Holden's will be slightly different than what 16   I would send for Mr. Perrin and Pekkala in that I knew 17   on the front end that the other two were members of a 18   union and I would have requested information about their 19   pension plan and things of that nature, but I didn't ask 20   for that for Mr. Holden.
17   Q <b>In addition to receiving records from</b> 18 <b>plaintiffs' counsel, do you do any of your own kind of</b> 19 <b>investigation and review anybody or something like that?</b>	21   Q <b>And are you satisfied that you received the</b> 22 <b>necessary documents to give opinions for these three</b> 23 <b>individuals?</b>
20   A   No.	24   A   Yes, with the caveat that -- as I identified in 25   Mr. Perrin's report. I'm trying to keep all the people
21   Q <b>No?</b>	
22   A   No, other than the statistics that I cite that I 23   utilize in my report.	
24   Q <b>Do you ask for specific kinds of records from</b> 25 <b>the attorneys?</b>	
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1    straight. Mr. Perrin's report is that due to his 2    divorce, he's unable to get his tax returns currently, 3    and I'm unable to specifically quantify his general 4    spending on unreimbursed employee expenses from when 5    he's on the road, and I had to use an estimate instead. 6    So that's something, hopefully, that we'll eventually be 7    able to cure.	1    had quite a few. For Mr. Holden I had a couple as I 2    recall. Yes, just from Tradesmen International.
8         Mr. Holden's recordkeeping is -- as you know, 9    it was not fantastic. So if he had better records, that 10   would be nice to have, but I have what he had.	3    Q <b>Do you know whether any of the treating doctors</b> 4 <b>for these three individuals have placed any limitations</b> 5 <b>or restrictions on them?</b>
11   Q <b>And did you get any of Mr. Perrin's tax returns?</b>	6    A   I don't know.
12   A   No.	7    Q <b>If that information is available, would you want</b> 8 <b>to know that?</b>
13   Q <b>Any W2s, anything like that?</b>	9    A   Yes, possibly. I guess it depends on the nature 10   of the treating doctor. But if the doctor feels that 11   there are no limitations that the person has at all, 12   then I would like to know that.
14   A   I'm trying to remember. I do have earnings 15   information for him through the Social Security 16   earnings. That gives me what the W2s are.	13   I'm not looking for restrictions, but I'm 14   looking for the recognition that somebody has difficulty 15   with something.
17   So I'm comfortable with what I'm showing as his 18   gross wages, but the difficulty comes in that I know it 19   would be unfair to use those because he has to spend 20   some money when he's on the road to maintain that 21   living. And so I have to estimate what that expenditure 22   was.	16   Q <b>And so if there were records to that effect or</b> 17 <b>said that there isn't a difficulty with something, you'd</b> 18 <b>want those records?</b>
23   Q <b>Did you review any of their employment files?</b>	19   A   Potentially.
24   A   I had some. Let's see. For Mr. Perrin I had a 25   number of his prior employers. For Mr. Pekkala I also	20   Q <b>And when you say potentially, why?</b> 21   A   Well, first of all, you're saying records. 22   Again, records don't tell me that much. I'm looking for 23   opinions. So, I mean, the treatment records rarely will 24   talk about permanent limitations that somebody has. 25   But if there's some type of opinion where the

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<p>1 doctor says that the hand tremors that Mr. Holden has      2 are likely to continue or that Mr. Holden has hand      3 tremors, something of that nature, then that would be      4 helpful.</p> <p>5 Q How often do you handle cases where your sole --      6 the sole basis of your opinions are paid experts?</p> <p>7 A I don't know what percentage of the time it      8 would be, but it's quite possibly at 50 percent or more.</p> <p>9 Q So, in other words, treating physicians aren't      10 giving their opinions, rather, it's experts being paid      11 by the plaintiffs attorneys?</p> <p>12 A Or by another attorney, but it's not necessarily      13 the plaintiff's attorney.</p> <p>14 Q Most of your work is plaintiff's work?</p> <p>15 A Oh, yes, but there's several times where I've      16 received the IME that's been performed for a worker's      17 compensation purpose or something of that nature that is      18 not paid for by the plaintiff at all.</p> <p>19 Q And is that the same, that 50 percent of the      20 time you'd be basing your opinions solely on paid      21 experts as opposed to a combination of treating and      22 paid? Is that a bad question?</p> <p>23 A I think I understand what you're saying. And I      24 can't say again with certainty, but I think it could be      25 up to 50 percent of the time, yes.</p>	<p>1 Q You are not here to render opinions on      2 restrictions or lack of restrictions?</p> <p>3 A That's right.</p> <p>4 Q Nor are you here to render any opinions on the      5 cause of the claimed injuries in this case?</p> <p>6 A That's right.</p> <p>7 Q Did you talk with any of the plaintiffs about      8 any injuries they've had since their exposure that might      9 impact their ability to work?</p> <p>10 A I would have asked them for any other      11 limitations that had arisen, either pre-injury or      12 post-injury.</p> <p>13 And if I knew about a particular injury -- For      14 instance, I know -- Yes, I'll have to find the record to      15 know which one had a couple of car accidents I believe      16 since the injury. And so I would have asked them did      17 they have any ongoing limitations from that car      18 accident, and the answer was no.</p> <p>19 Q And is that something that you specifically      20 would have put in your evaluation?</p> <p>21 A Yes. It will be in my interview notes, not      22 necessarily in the evaluation.</p> <p>23 Q Okay. So I think that was Mr. Pekkala.</p> <p>24 A Was that it? Okay.</p> <p>25 Q And we're going to go into each of the</p>
Page 36	Page 37
<p>1 individuals, but while we're on the subject, why don't      2 you take a look at his.</p> <p>3 (Document marked as Deposition      4 Exhibit 6 for identification.)</p> <p>5 Q On Exhibit 6 can you just confirm that that's      6 the evaluatee form for Mr. Pekkala?</p> <p>7 A It is.</p> <p>8 Q Okay. And is there a notation on there with      9 regard to his car accidents and whether he has      10 limitations from them?</p> <p>11 A Yes, there's -- I don't number these pages, but      12 up in the upper right-hand corner it will say injury      13 right below where it says evaluatee interview form. It      14 looks like this. Yes, I think you're there. That's it.</p> <p>15 And then the very top of that page is      16 pre-existing limitations. Even though this isn't      17 pre-existing the accident, I would also discuss anything      18 unrelated to the exposure here. And there you'll notice      19 the August '16 fall, the March '16 lung nodule, the      20 November '17 car accident, and I guess also the May '14      21 getting something in his eye.</p> <p>22 Q Okay. This box called pre-existing limitations      23 seems to me like it's taken directly from records.</p> <p>24 A In this case, yes. I mean, it doesn't have to      25 be, but in this case, by reviewing I believe it was just</p>	<p>1 his deposition, all this information came about from      2 that. And so that was noted in there for me to discuss      3 with him during the deposition.</p> <p>4 Q Because I wouldn't have expected Mr. Pekkala to      5 say I was diagnosed with a lung nodule.</p> <p>6 A Right.</p> <p>7 Q Okay. So is there anything in here that says      8 Mr. Pekkala said he has no issues with or limitations      9 with any of these pre-existing --</p> <p>10 A The very last two letters, non-limiting.</p> <p>11 Q And is that something that was put in because      12 you didn't see anything in the medical records or you      13 specifically had a conversation with him?</p> <p>14 A The latter.</p> <p>15 Q And how do we know that?</p> <p>16 A I don't. I have no medical evidence that      17 indicates there's any limitation, and so I rely upon him      18 to say that that's true.</p> <p>19 Q But, I mean, how do I know that that's him      20 saying non-limiting rather than your case manager going      21 through it and saying non-limiting because there's      22 nothing listed in the medical record?</p> <p>23 A It's neither. It's me saying it's non-limiting,      24 because I asked him that question and that's the answer      25 he gave me.</p>

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1 Q And you recall that specifically as you sit here 2 today? 3 A I know how I take notes, yes. 4 Q And so are you sitting in front of a computer 5 where you enter in non-limiting? 6 A Yes. 7 Q So you've put in all of this information at the 8 same time that you're talking to Mr. Pekkala or you're 9 sticking in the non-limiting afterwards? 10 A The latter. 11 Q When did you talk with Mr. Pekkala? 12 A That would be July 16th of this year. 13 Q And do you remember about what time it was? 14 A No. 15 Q Morning? Afternoon? 16 A I have no idea. 17 Q Do you have notes, any handwritten notes from 18 your conversation with Mr. Pekkala? 19 A No. As we indicated, I type directly into the 20 computer. 21 Q The notes under the toxic exposure, is that 22 something that was put in there before you talked with 23 Mr. Pekkala? 24 A I'm sorry, you're on the same page? 25 Q I am.	1 A Okay. Yes, the toxic exposure is my 2 understanding of the nature of the case. It's not an 3 opinion of mine. 4 Q We're going to get back to these, but I just 5 thought we'd talk about it while we were on it. 6 Did you conduct any kind of research into what 7 the requirements are for the jobs for being a welder, 8 journeyman, anything like that? 9 A Nothing specific. I'm familiar with the 10 requirements under the Dictionary of Occupational 11 Titles. 12 Q Does that play at all into your opinions? 13 A In this particular case, no, because I'm -- I 14 accept that they were journeymen welders who had 15 demonstrated their abilities, and I'm projecting that 16 they will continue to be journeymen welders, albeit at a 17 reduced level. 18 Q What about Mr. Holden? 19 A Mr. Holden I never projected to be a 20 boilermaker, but I do allow for earnings as a general 21 welder or in some more -- just using his past earning 22 history in 2014. 23 Q His past earning history in 2014? 24 A Yes. 25 Q What about 2015?
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1 A 2015 I did not have -- Let me see here. Yes, 2 2015 he had almost no earnings that year, at least once 3 you net it out against his expenses that he showed on 4 his tax return. So it does not represent a full year of 5 competitive earnings. 6 Q What about 2013? 7 A '13 he earned very little. He had -- Well, for 8 what I have documentation in the initial documents, 9 forgive me, he had very little. I just need to see if 10 maybe the updated information had more. 11 No, that was pretty much consistent with the 12 final update that we just received about a week or so 13 ago. 14 Q And what is that, the final update? What does 15 that mean? 16 A We just received his Social Security 17 Administration summary of W2s about a week ago. 18 Q Okay. And how far do those go back? 19 A They'll go back to -- These go back I know at 20 least to 1999. It's quite possible they go back even 21 further. I believe they go back to 1996. 22 Q And so is the only year you used 2014? 23 A Yes. 24 Q Do you know how long he had been a welder? 25 A He has --	1 Q Strike that. Let me ask you that when we get in 2 to Mr. Holden. 3 A Okay. 4 Q On each of the plaintiffs I saw in your reports 5 you utilized ACS for your opinions. 6 A To some degree, yes. 7 Q What is that? 8 A It's the American Community Survey, which is a 9 product of the United States Census Bureau. 10 Q And is that like a survey that comes to my house 11 and I'd be filling it out at my house? 12 A You could, yes. They sample 1 percent of the 13 population each year. 14 Q So if there's 350 million, it would be 3.5 15 million? 16 A Yes. 17 Q And then I would fill it out and I'd send it 18 back? 19 A Yes. 20 Q Okay. I saw in your report some of the 21 questions, and I guess I had questions myself about 22 those. So maybe if you could just grab -- I don't care 23 whose report it is -- maybe Mr. Perrin's or somebody. 24 A Do you have Perrin's in front of you? 25 Q I do have Perrin's in front of me.

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<p>1 A Then I'll do that one.</p> <p>2 Q So it looks like on page 13 of 15 there is some 3 ACS disability criteria. And I'm assuming that these 4 questions come from the ACS survey?</p> <p>5 A They do.</p> <p>6 Q Okay. And it looks like there was a survey 7 before 2008 and then it changed after 2008.</p> <p>8 A Yes.</p> <p>9 Q Okay. And at least in this figure 2 on page 13 10 of Mr. Perrin's report there's questions about hearing, 11 vision, cognitive, mobility, self-care, and go outside 12 home.</p> <p>13 A Yes.</p> <p>14 Q And one of the questions asks about because of a 15 physical, mental, or emotional condition, does this 16 person have serious difficulty concentrating, 17 remembering, or making decisions, question mark. And 18 that's one of the questions that's asked somebody who's 19 taking this survey, perhaps a survey that came to their 20 home?</p> <p>21 A Yes.</p> <p>22 Q And if they answer yes to that, what does that 23 mean?</p> <p>24 A That would indicate that person has a cognitive 25 limitation.</p>	<p>Page 42</p> <p>1 Q How do you parse out the people like who -- I 2 mean, I feel like I have a problem remembering things as 3 I age and it's getting more difficult and more 4 difficult. How do I parse that out of that?</p> <p>5 A Well, if you answer that question positively, 6 then you're going to be included in that population. 7 But what I do parse out of it are people that have any 8 other form of limitation when I'm dealing with -- 9 Depending upon the case -- Yes, I only use a non-severe 10 disability at worst for Mr. Pekkala and Mr. Perrin, and 11 I used totally disabled for Mr. Holden, so it won't come 12 into play there.</p> <p>13 But for a non-severe disability I will look at 14 people who have only that cognitive limitation, no other 15 form, and exclude those people, most importantly, that 16 have self-care or go-outside-the-home limitations. So 17 those are going to be persons with severe disabilities, 18 as well as anybody who has any other form of disability.</p> <p>19 Q So I understand that if you don't say yes to any 20 of the next three, you don't fall into the severe 21 category?</p> <p>22 A It's really the last two that would be the 23 severe category.</p> <p>24 Q Okay. So if I only answer yes to the cognitive, 25 I'm in the non-severe cognitive disability?</p>
<p>Page 44</p> <p>1 A Yes.</p> <p>2 Q Okay. So --</p> <p>3 A You may be. If you say yes to cognitive and no 4 to all five of the others, then you're not severe.</p> <p>5 Q Okay. So potentially if I thought that because 6 I'm having difficulty remembering certain things or 7 concentrating on certain things, if I think that I, at 8 least according to the ACS, am considered not severe 9 cognitively disabled?</p> <p>10 A So if you think you have a physical or mental or 11 emotional condition that causes that and you answered 12 yes, then, yes.</p> <p>13 Q Okay. And so potentially that will affect my 14 worklife expectancy?</p> <p>15 A Well, if you have a cognitive limitation, then, 16 yes, that would potentially impact your worklife.</p> <p>17 Q And so that criteria, disability criteria, that 18 can include people like me or others who think as they 19 age, they have trouble remembering things?</p> <p>20 A Yes.</p> <p>21 Q Is that common that people have trouble 22 remembering things as they age?</p> <p>23 A It's common that it's harder to remember. It's 24 not common that they would identify that as having a 25 cognitive disability.</p>	<p>Page 45</p> <p>1 Q Well, they wouldn't identify it as a cognitive 2 disability. They're just answering the question.</p> <p>3 A Right, but what I'm saying is it's not common 4 that they would answer that positively.</p> <p>5 Q And how do you know that?</p> <p>6 A By the testing that the Census Bureau has done 7 on those questions that verify people do accurately 8 perceive and answer those questions.</p> <p>9 Q What is that testing?</p> <p>10 A That's cited in here on the prior page in that 11 very last paragraph in an article documented by Brault, 12 Stern, and Raglin.</p> <p>13 Q Okay. And so is it sufficient for you that it 14 says it's found to be a reliable measure of disability? 15 That's sufficient for you?</p> <p>16 A Well, it was sufficient for me as I've read 17 their study and found that their study makes sense.</p> <p>18 Q Are there limitations on the use of the ACS?</p> <p>19 A What do you mean? Does the Census Bureau limit 20 how you can use their data?</p> <p>21 Q No. Does the government put out some -- like 22 issue some kind of uses or limitations of uses, anything 23 like that?</p> <p>24 A No. Well, they put out uses and they show how 25 the data is used. It's used very similar to how I'm</p>

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<p>1 doing it here, to identify the probabilities of      2 employment or likelihood of employment and the typical      3 earnings for persons with a disability.</p> <p>4 Q Because when I pulled this up on the Internet --      5 And I pulled up something that talks about some of the      6 uses and the limitations of the uses. Have you seen      7 that before?</p> <p>8 A I think you're referring to the wrong survey.      9 There's another survey called the Current Population      10 Survey, and I think that's what you're referring to.</p> <p>11 Q So do the questions differ on the CPS versus the      12 ACS?</p> <p>13 A At least they did at the time of that article      14 that I think you're thinking of. That uses the      15 limitations of data and the annual social economic      16 supplement to the Current Population Survey.</p> <p>17 And the annual social economic supplement does      18 have different questions from what is in the ACS, but      19 the monthly Current Population Survey now since that      20 article was published has the exact same questions as      21 the ACS.</p> <p>22 MS. O'BRIEN: Can I hear that back? I was      23 busy looking.</p> <p>24 THE WITNESS: You sure you want to hear that?      25 I can repeat it or rephrase it.</p>	<p>1 BY MS. O'BRIEN:      2 Q Okay. Sure, rephrase it.      3 A There's essentially three different surveys that      4 we're talking about. There's the ACS, then there's the      5 Current Population Survey, which is a monthly survey      6 conducted by the U.S. Census Bureau in cooperation with      7 the Bureau of Labor Statistics, Department of Labor.      8 The monthly CPS has a supplement in March of      9 every year called the Annual Social Economic Supplement,      10 or ASEC. That supplement has some questions in it that      11 measure the presence of a work disability, which is the      12 general limitation in the kind or amount of work a      13 person can do without specification of a functional      14 limitation that causes that.      15 And so that's the survey, the ASEC, that that      16 article that you're referring to was referring to. It's      17 referred to -- Possibly there is a Current Population      18 Survey because that was the only disability questions      19 that existed in the Current Population Survey at that      20 time, but that was only in the March supplement.      21 Since that time, starting in 2007 -- no, 2009,      22 I'm sorry, 2009 the Current Population Survey monthly      23 questions include these exact same questions you see on      24 page 13 from the ACS.</p> <p>25 Q And that article that you're referring to, does</p>
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<p>1 it also address the CPS outside of the March supplement?</p> <p>2 A No, because those questions that exist there now      3 didn't even exist at that time. The person who wrote      4 that article you're talking about was the person who was      5 charged with helping to come up with these questions      6 that are in the CPS now and that are in the ACS. And he      7 had that caveat that he wanted to put out there to say,      8 hey, these aren't as good as the questions that we're      9 going to have. The questions that he was developing are      10 what you see here in figure 2.</p> <p>11 Q The Brault, Stern and Raglin 2007 that you      12 reference, is that -- is that something that is a      13 recognized publication?</p> <p>14 A It's a recognized scientific article. The      15 Federal government doesn't necessarily have publications      16 that they count as peer-reviewed journals. It doesn't      17 exist within the Census Bureau or Bureau of Labor      18 Statistics, but it is one of their publications.</p> <p>19 Q Have you ever used the CPS for the basis of your      20 opinions?</p> <p>21 A You mean the ASEC or the monthly CPS?</p> <p>22 Q The CPS.</p> <p>23 A Okay. I don't use the monthly CPS because the      24 ACS has the same questions, but has a much larger pool      25 of information, a much larger sample size. As we talked</p>	<p>1 about, it has more than 3 million people it samples per      2 year. The CPS only samples about a hundred thousand      3 people.</p> <p>4 Q The same questions?</p> <p>5 A Right.</p> <p>6 MS. O'BRIEN: Let me just mark it so that I      7 have it in the record as to what you're saying.      8 (Document marked as Deposition      9 Exhibit 7 for identification.)</p> <p>10 BY MS. O'BRIEN:</p> <p>11 Q I'm going to show you what's been marked as      12 Exhibit 7. Is this the document that we've been talking      13 about, about the uses and limitations of the CPS data on      14 work disability?</p> <p>15 A Yes.</p> <p>16 Q And do you know when this was created?</p> <p>17 A It was probably around 2005 or '06 would be my      18 best estimate. It was while they were working on      19 developing the new questions that went into place in      20 2008.</p> <p>21 Q And is there a similar document now for the 2008      22 ACS?</p> <p>23 A No, because this only pertains to a totally      24 separate survey. So this never existed for the pre-2008      25 ACS or the post-2008 ACS.</p>

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<p>1       Q Right. And my question is, is there a similar 2 document put out by anybody with regard to the uses and 3 limitations of the ACS?</p> <p>4       A No.</p> <p>5       Q Why do you use this particular method of the 6 ACS?</p> <p>7       A Particular method?</p> <p>8       Q Yes, the model. Why do you use this model?</p> <p>9       A I use the ACS because it provides measures of 10 some of the most common functional limitations that I 11 run up against, and, definitely in this case, matches 12 some of the limitations that I'm looking at.</p> <p>13           It also has the testing behind it and has a 14 huge sample size that allows delineation of the 15 observations, the measurements of probabilities of 16 employment, and earnings changes down to a very specific 17 group.</p> <p>18       MS. O'BRIEN: Can I hear the answer back 19 please.</p> <p>20           (Record read.)</p> <p>21 BY MS. O'BRIEN:</p> <p>22       Q So when you're saying it uses common things that 23 you run across, are you saying that, for instance, in 24 this case, a physical, mental, or emotional condition is 25 a cognitive disability? Is that what you're --</p>	<p>1       A That the cognitive limitation is -- I'm 2 frequently asked to examine a loss of earnings due to 3 brain injury. And so that's a very common use that I 4 would have there. Just as I may frequently look at 5 somebody who has various back injuries, that it might 6 impact mobility, the next question down.</p> <p>7       Q Do the tables distinguish at all between 8 professions as to potential worklife expectancies?</p> <p>9       A Not worklife. Worklife you can't really measure 10 by profession because people may leave one profession 11 and go to another. That doesn't mean that their 12 worklife has stopped when they leave the one profession. 13 So worklife is measured more specifically, generally, by 14 level of education and gender.</p> <p>15       Q And is that the common practice by most 16 vocational rehabilitation counselors?</p> <p>17       A It's the common practice by most economists. A 18 lot of rehab people don't get into that because it's too 19 much statistics.</p> <p>20       Q Has your use of these tables ever been stricken 21 by a court?</p> <p>22       A No.</p> <p>23       Q Has, to your knowledge, anyone else using those 24 ACS tables been stricken by any court?</p> <p>25       A Yes.</p>
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<p>1       Q On how many occasions that you are aware of?</p> <p>2       A I can't say -- give you an exact number, but 3 three to five I would say.</p> <p>4       Q Is that something that your firm has kept track 5 of?</p> <p>6       A I don't believe so.</p> <p>7       Q And how are you aware of it?</p> <p>8       A Only that it has been brought to my attention. 9 A couple of them would be by other professionals within 10 Vocational Economics and that I've learned of some 11 others.</p> <p>12       Q Why are they stricken by the courts?</p> <p>13       A It depends. Many cases -- Well, I guess I won't 14 say many cases. The old data that we used to use were 15 stricken because the people using them just misused 16 them. I can't say that I know that's true for any ACS 17 times that have been stricken.</p> <p>18       Q Well, what does that mean when they used them 19 wrong? You said they misused them.</p> <p>20       A Well, there's old data we used to use before the 21 ACS existed.</p> <p>22       Q What was that?</p> <p>23       A That was -- We used the ASEC. And as an 24 example, there's a case in Nebraska where an economist 25 used that data to give an opinion on reduced worklife</p>	<p>1       for somebody, even though the vocational expert and the 2 doctor said the person had no disability. So it made 3 absolutely no sense to reduce the worklife for a 4 disability.</p> <p>5       Q Okay. But in other cases has a court that 6 you're aware of found that the tables are not legitimate 7 for purposes of determining a worklife expectancy?</p> <p>8       A Let's make sure we're talking the same language. 9 You said the tables. I'm not -- I'm using the ACS data.</p> <p>10       Q ACS data.</p> <p>11       A Okay. So for Dr. Gamboa, who is the person that 12 I mentioned with Vocational Economics that had been 13 stricken a couple of times, I'm not sure the details 14 behind why he was stricken, other than it was just 15 general methodology, whether it was purely the ACS or 16 whether it was something else.</p> <p>17           There was a gentleman in Baltimore that used 18 the tables there several times before and several times 19 since, but one court that he was in front of, they 20 determined he couldn't use the worklife tables that we 21 had produced using the data because they are too 22 general, but they allowed him to use the raw data. So, 23 in essence, he used what I would have used.</p> <p>24       Q So when you say the raw data, what do you mean 25 by that?</p>

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<p>1 A Like in this case, when I compute the worklife      2 expectancies for any of the three people, I used the      3 information from the ACS that shows the probability      4 they're going to be employed each year rather than      5 saying -- taking a generic worklife expectancy and      6 multiplying it times their earnings.</p> <p>7 Q So had that person evaluated the worklife      8 expectancy in that way, the way you've done it in this      9 case, you don't believe that their tables would have      10 been stricken?</p> <p>11 A I can't say what the judge would have done, but      12 that's what he was allowed to do after the judge used --      13 he disallowed using the worklife in general.</p> <p>14 Q And when it was too broad, what does that mean,      15 that it was too broad?</p> <p>16 A I don't know. Many people that criticized use      17 of the disability data do it saying it's not specific to      18 the plaintiff. There's nothing that will be specific to      19 the plaintiff in that we're trying to predict the      20 future. There's no measure about exactly what the      21 plaintiff will do at any point in the future.</p> <p>22 But the best measure to use is from a      23 population that's most like the plaintiff. So you're      24 much better off to use data dealing with disability, if      25 that person has that disability, than to use data from</p>	<p>1 the general population because that disability data is      2 not specific. That was the -- my understanding of why      3 the Baltimore case was stricken.</p> <p>4 Q Are your numbers always higher than other      5 vocational rehab or economists that come up with      6 worklife expectancies?</p> <p>7 A No. By higher you mean is the loss always      8 higher?</p> <p>9 Q Yes.</p> <p>10 A No, not always.</p> <p>11 Q Most of the time?</p> <p>12 A It depends on what the other person's doing. So      13 I can't say. In most cases I don't see somebody on the      14 other side of me.</p> <p>15 Q You never review the other side of the reports      16 or you just don't see anybody on the other side of you?</p> <p>17 A I'm saying that in most cases the defense      18 doesn't present an expert. They would -- Rather than      19 put a floor on the case by presenting their own expert,      20 they would rather take what I put forward.</p> <p>21 Q So is it your opinion that the use of the ACS is      22 something that's generally accepted?</p> <p>23 A Yes.</p> <p>24 Q How many people in your field use that ACS      25 system?</p>
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<p>1 A I don't know.</p> <p>2 Q Do you have any estimate whatsoever?</p> <p>3 A Well, as the rationale documents, it's pretty      4 much the gold standard by anybody who does disability      5 research outside of the litigation arena where it's not      6 really a question of having two sides fighting against      7 each other on what to use.</p> <p>8 Q I want to --</p> <p>9 A It's only -- Let me answer. It's only within      10 the litigation arena where I see people that would      11 disagree on using that, and that's when they're retained      12 by somebody that opposes -- somebody using it.</p> <p>13 Q Okay. So tell me, though, in somebody in a      14 litigation setting, is it generally accepted to use the      15 ACS when making the determination that you did?</p> <p>16 A Yes.</p> <p>17 Q Then why is somebody on the other side always      18 criticizing or having a problem with that? Why is that?</p> <p>19 A They're paid to.</p> <p>20 Q That's the only reason that you think?</p> <p>21 A That's the only reason I think.</p> <p>22 Q Out of the group that you rely on in this ACS      23 disability criteria, those that are surveyed, how many      24 of them are welders?</p> <p>25 A I can't say. I would have the ability to select</p>	<p>1 how many are welders, but I can't tell you what that is.</p> <p>2 Q Do you have any idea?</p> <p>3 A Not off the top of my head.</p> <p>4 Q How many are welders that have exposure to lead?</p> <p>5 A That, I would have no way of knowing.</p> <p>6 Q You don't specifically use any kind of data that      7 looks at the likelihood of a welder to continue to work      8 with a disability?</p> <p>9 A That's right.</p> <p>10 Q Do the tables that you've generated for the      11 various plaintiffs, do they assume that if someone has      12 no disability on the date of the injury, they'll      13 continue to have no disability or impairment?</p> <p>14 A Yes.</p> <p>15 Q Do you do anything to factor in the potential      16 for welders or construction workers or people doing      17 physical work to have any kind of disabilities or      18 limitations?</p> <p>19 A No.</p> <p>20 Q For instance, someone working as a lawyer might      21 have different -- the different potential for a      22 disability or an impairment versus a welder?</p> <p>23 A Yes, and that is captured in general by      24 education. Persons with a professional degree have a      25 much higher probability of ongoing employment. They're</p>

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1 not -- they're less likely to be out of a job at any 2 point in time.  3 Whereas, when you go down to lower levels of 4 education, either a high school degree for Mr. Holden or 5 some college for Pekkala and Perrin, then those 6 probabilities are much lower, and, therefore, the 7 worklife expectancies are decreased for larger gaps of 8 employment that person will have.	1 A Only by the probability. So if you'll note, 2 even at the date of my report, I reduced the likelihood 3 that he's going to be employed tomorrow to only 89 4 percent, even though he's a hundred percent employed 5 today. I'm taking away 10 percent of all his wages that 6 he's making now because I'm allowing for that 7 probability of being out of work.  8 Similarly, I need to allow for the remote 9 probability, a much smaller probability, that he could 10 be employed up to the age of 66. And by doing that, I 11 reduce his total number of years of work by that 6.7.
9 Q Does that change -- So I noted in Perrin you 10 have him working until 66.  11 A Not really.	12 Q How often do welders work until age 66? 13 A I don't know. I'm allowing it for -- I'm not 14 saying he would work until 66. I'm saying that if you 15 add the numbers together, that he would work to about 16 70 -- I'm sorry, about 61 if you add the 13.3 years to 17 his current age.
12 Q Well, your tables go to 66.  13 A I explore the probability up to 66. But what 14 I'm looking at out of those -- So to get him to 66, 15 you're going out 19 years in the future. Actually, 21 16 years. Well, yes, 19 years in the future from the date 17 of my report. But out of those 19 years, I'm showing he 18 would only be working without a disability 13 of the 19 years.  20 So by factoring in the probabilities that he 21 would be employed in each of those 19 years, it 22 reduces -- it allows for a gap of employment by about 23 5.7 years.	18 Q Because he gets a full pension at 61? 19 A Well, that's not why I'm doing it. He would get 20 a full pension at 61, but the way I'm computing 61 is by 21 adding his worklife to his current age.  22 Q Okay. And what information do you have that 23 welders would work until age 61?  24 A The same probability that he would be employed 25 for any other male with some college and no disability.
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1 Q And you don't specifically take into effect 2 welders?  3 A As I indicated before, there's no worklife 4 expectancy by occupation.  5 Q Is there any kind of information concerning 6 limitations that welders experience over their lifetime? 7 A Not that I know of.  8 Q Would you consider someone with depression or 9 anxiety to have a limitation impacting their vocational 10 assessment or is that something you can't say?  11 A Yes, those are diagnoses and not identifications 12 of limitations. So people with those diagnoses could 13 have no limitation or they could have limitations. I 14 wouldn't be qualified to say just from the diagnosis.  15 Q Okay. Let's take a look individually at some of 16 them, and perhaps Perrin is the best one to start with 17 since we're right there.  18 A Okay.  19 Q The first thing I want to take a look at is the 20 evaluatee information.  21 (Document marked as Deposition 22 Exhibit 8 for identification.)  23 Q I'll show you what's been marked as Exhibit 8. 24 Is that the form that we're talking about in regards to 25 Mr. Perrin?	1 A It is.  2 Q When was this form completed? 3 A On July 16th. 4 Q Is that the date that you had a telephone 5 interview with Mr. Perrin? 6 A It is. 7 Q It shows at the time that you interviewed him 8 that he's divorced from his wife and that he has three 9 boys. 10 A Yes. 11 Q He has a four-year boilermaker apprenticeship. 12 A Yes. 13 Q Do you know, is he a journeyman? 14 A He is. 15 Q It says high school complete. Do you know if he 16 graduated from high school? 17 A Yes. So that indicates he did graduate. 18 Q On the next page you have career vision, he 19 wanted to go to at least 63. Is that something that he 20 provided to you? 21 A Yes. 22 Q Doesn't think he can go as long as what he says 23 now. 24 A Correct. 25 Q There's a box under job history, currently

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<p>1 working. It's not checked.</p> <p>2 A Well, it should be. He is.</p> <p>3 Q Okay. So that should have been something that</p> <p>4 was checked on the second page of your evallee form,</p> <p>5 correct?</p> <p>6 A Potentially. I'm just trying to recall whether</p> <p>7 he was employed at that particular day. As you know, he</p> <p>8 changes jobs that he's on frequently. And -- Yes, there</p> <p>9 it is. It says currently laid off. So he was between</p> <p>10 jobs at the time.</p> <p>11 Q Okay. Do you know when the last time he had had</p> <p>12 a job?</p> <p>13 A No.</p> <p>14 Q Do you know if he had a job scheduled?</p> <p>15 A At this time he did not.</p> <p>16 Q And is that something that you specifically</p> <p>17 asked him?</p> <p>18 A That would be on there. He did have a job. I'm</p> <p>19 just noting that he's currently laid off.</p> <p>20 Q You don't have his tax returns. You note that.</p> <p>21 A Yes.</p> <p>22 Q Okay. And then there's impact, can't hold hand</p> <p>23 steady to do as much welding, gets laid off sooner if</p> <p>24 not foreman. Welding skills have dropped significantly.</p> <p>25 And you go on and on. Is that something that he told</p>	<p>1 you or you obtained from other sources?</p> <p>2 A That's pretty much all what he told me directly,</p> <p>3 but indirectly some of it was mentioned in his</p> <p>4 deposition.</p> <p>5 Q So do you know which was which?</p> <p>6 A I can't say without going back through the</p> <p>7 deposition, so.</p> <p>8 Q You didn't observe him, so you couldn't</p> <p>9 determine whether he can't hold his hand steady?</p> <p>10 A That's right.</p> <p>11 Q Did you see any information at all to show that</p> <p>12 he gets laid off sooner if he's not the foreman?</p> <p>13 A No.</p> <p>14 Q Would you expect to see something like that?</p> <p>15 A No, not directly on a job-by-job basis saying</p> <p>16 we're laying him off because his work isn't as good.</p> <p>17 However, I would expect to see it play out in how much</p> <p>18 he earns each year.</p> <p>19 Q Do you see anything wrong with laying somebody</p> <p>20 off if they have some kind of disability?</p> <p>21 A If that disability interferes with a</p> <p>22 significant -- with a -- I'm trying to think of the</p> <p>23 right phrase now, it's skipping my mind -- with one of</p> <p>24 the significant duties of that job, then, yes.</p> <p>25 Q If he's foreman, apparently he can still do the</p>
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<p>1 job?</p> <p>2 A He could assign some -- a lot of the physical</p> <p>3 work to other people to do.</p> <p>4 Q And did you consider that when you came up with</p> <p>5 your numbers?</p> <p>6 A Yes, and that -- his ability to be foreman will</p> <p>7 go ahead and enhance his earnings. And if you look at</p> <p>8 his earnings now, you should be able to see a drop in</p> <p>9 earnings if he's not able to maintain a job when he's</p> <p>10 not foreman, and there is a drop down.</p> <p>11 Q On the next page you note that he's obese, 347</p> <p>12 pounds. Where does that come from?</p> <p>13 A One of the medical records had that.</p> <p>14 Q Then there was something about an injury to his</p> <p>15 back that occurred in January.</p> <p>16 A Yes.</p> <p>17 Q And it says, did not expect any ongoing</p> <p>18 limitations. Did you talk with anybody to see whether</p> <p>19 or not he had any limitations in that regard?</p> <p>20 A No.</p> <p>21 Q Do you know whether Mr. Perrin had any</p> <p>22 limitations before being exposed to lead?</p> <p>23 A I see none indicated in any of the doctors'</p> <p>24 opinions that I've seen, and he reported to me that</p> <p>25 he -- the only limitation he had at the time of the</p>	<p>1 exposure was the soreness from this injury there on</p> <p>2 January 27th, but noting that it's his expectation that</p> <p>3 would be taken care of.</p> <p>4 Q Do you know whether Mr. Perrin had any kind of</p> <p>5 medical condition that may limit him in the future?</p> <p>6 A Not to my knowledge.</p> <p>7 Q Not anything that you saw in any of the records?</p> <p>8 A That's right.</p> <p>9 Q And if you had that information, would that</p> <p>10 potentially play into your figures?</p> <p>11 A Potentially.</p> <p>12 Q Because if he was going to have problems in the</p> <p>13 future based upon that medical condition, you'd want to</p> <p>14 know about it?</p> <p>15 A Yes.</p> <p>16 Q Do you know whether he's had some medical</p> <p>17 conditions where he's been off work which might justify</p> <p>18 why his earnings are down?</p> <p>19 A You mean off work since the exposure?</p> <p>20 Q Correct.</p> <p>21 A Medical conditions other -- that are not related</p> <p>22 to the exposure?</p> <p>23 Q Correct. Thanks for clarifying that.</p> <p>24 A Not that I'm aware of.</p> <p>25 Q That also may impact your opinion as to what his</p>

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1 loss of earnings are?	1 A Yes.
2 A It could.	2 Q And have you reviewed all of those reports?
3 Q Work, it says he took off one week.	3 A I have.
4 A I'm sorry, where are you now?	4 Q So you confirmed that what is written here on
5 Q Work down at the bottom.	5 this other case notes is what is in those reports?
6 A Oh, yes. Yes.	6 A Yes.
7 Q And what does that mean, took off one week?	7 Q One of the things you talked about is that you
8 A After notification of the exposure he only	8 rely upon these reports to determine limitations. And I
9 missed one week.	9 want to take a look at the second paragraph under
10 That page -- There will be a similar page for	10 Opinions.
11 all three. This page is completed by my case manager as	11 A Okay.
12 a way of communicating to me what her understanding of	12 Q There's a line that says, however, particularly
13 the medical opinions are. So it's not part of the	13 in association. Do you see that?
14 interview itself. It's just her documentation.	14 A Yes.
15 Q So you're talking about the page that says other	15 Q Okay. It says, some aspects of verbal memory,
16 case notes --	16 he potentially will evidence diminished efficiency and
17 A That's right.	17 task completion in work and other settings and this will
18 Q -- in the evaluatee interview form, which is	18 potentially -- and this potentially will have some
19 Exhibit 6, is it?	19 adverse impact on overall earnings potential over time.
20 A Actually, for Mr. Perrin it's 8.	20 A Yes.
21 Q 8?	21 Q Oh, that's a rough sentence.
22 A Yes.	22 Did you use that in making your opinions in
23 Q So it's not you putting what the opinions are	23 this case?
24 down from the medical reports, but rather your case	24 A I did.
25 manager?	25 Q And how did you use that?
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1 A Merely the fact that he does have cognitive	1 in this case note?
2 limitations. She does recognize they are there to some	2 You don't have to wear glasses for that?
3 degree and they will impact his overall productivity,	3 A I don't have a cognitive impairment.
4 and that's consistent with the data from the ACS that	4 Okay. It looks like this is -- this same
5 shows that persons with cognitive limitations, even	5 paragraph, it may actually be a verbatim copy. What she
6 non-severe, don't have the same rates of earnings	6 says here, and you can tell me if it's different,
7 increases or the same probabilities of ongoing	7 particularly in association with acquired weaknesses
8 employment.	8 involving various aspects of cognitive and motor
9 Q But how does that paragraph fit into because of	9 processing speed and some aspects of verbal memory, he
10 a physical, mental, or emotional condition, does this	10 potentially will evidence diminished efficiency in task
11 person have serious difficulty concentrating,	11 completion, in working -- in work in other settings and
12 remembering, or making decisions?	12 this potentially will have some adverse impacts on
13 A I think they're consistent.	13 overall earning potential over time.
14 Q So this paragraph 2 to you is consistent with	14 And then --
15 what is in the ACS under cognitive?	15 Q That's it.
16 A Well, more specifically, Dr. Santa Maria's	16 A Well, it goes on. I'm just seeing whether
17 paragraph, not the summary of her paragraph, is	17 anything else is relevant to that. No, what's left
18 consistent.	18 talks about independent living. So that's fine.
19 And I think I said her. It's his. I keep on	19 Q So how is what you just read equal to what is in
20 referring to Santa Maria as her.	20 the ACS?
21 Q So what is written under opinions, this is just	21 A I see that as a limitation -- her description of
22 a summary of Dr. Santa Maria's opinion?	22 that as a limitation in -- forgive me -- in
23 A Yes.	23 concentrating, remembering, and making decisions that
24 Q Can you take a look in Dr. Santa Maria's opinion	24 impacts his overall memory and focus.
25 and tell me how the opinion differs from what's written	25 Q So Dr. Santa Maria says there's the potential

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1 for it; he doesn't say it's absolute?	1 remembering, or making decisions?
2 A True.	2 A Yes.
3 Q You take it to the next level and say it's	3 Q And what is it in that paragraph that equates
4 absolute?	4 with serious difficulty concentrating, remembering, or
5 A Yes.	5 making decisions?
6 Q And you don't have a medical degree or any	6 A Cognitive and motor processing has to do with
7 ability in medical training to make that leap, so to	7 all three of those, motor processing speed I should say.
8 speak?	8 And aspects of verbal memory also had to do with this.
9 A I don't know that that's true. I do have the	9 Q Those are serious difficulties?
10 ability to translate limitations, and, here, Dr. Santa	10 A I believe so.
11 Maria's identified the limitation and to how it will	11 Q Did you do anything to follow up with Dr. Santa
12 impact the workforce.	12 Maria to find out whether Mr. Perrin in fact fits into
13 Q Because Dr. Santa Maria says potentially. He	13 this ACS disability criteria?
14 doesn't say it will.	14 A No.
15 A Well, he does say -- The potential is in how	15 Q And what is the rate according to Dr. Santa
16 it's going to impact the workforce. That's what I'm	16 Maria of how this diminished efficiency and verbal
17 interpreting.	17 memory will affect Mr. Perrin's worklife?
18 What he says without saying potential is that	18 A I don't know what you mean by rate.
19 he has acquired weaknesses and aspects of cognitive and	19 Q So how fast does Dr. Santa Maria believe that
20 motor processing speed and verbal memory. So he's	20 this is going to affect his worklife?
21 identified those limitations that exist. My role as a	21 A Worklife expectancy is an economic concept. I
22 rehabilitation counselor is to translate the limitations	22 wouldn't expect Dr. Santa Maria to be able to quantify
23 against requirements in the workforce.	23 the impact on worklife expectancy.
24 Q Is what Dr. Santa Maria said in that paragraph	24 Q So you don't think Dr. Santa Maria could say,
25 synonymous with a serious difficulty concentrating,	25 oh, I expect him to work just fine for the next 10 years
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1 and then we're going to see something going down or I	1 A And I answered yes, and I also found it
2 think he's going to work fine for the next five years	2 consistent with Dr. Leitch's report.
3 and then we're going to see some diminished capacity,	3 Q Okay. It says, can be i shoulder, back,
4 anything like that?	4 forearm, it varies. Do you see that?
5 A I wouldn't expect so.	5 A Yes.
6 Q Going on to the next page, you talk about pain.	6 Q Is that something that he had prior to the
7 A Yes.	7 exposure?
8 Q Do you see that? And is that something that he	8 A No.
9 told you, Mr. Perrin?	9 Q And how do you know that?
10 A It is. And it's also discussed in Dr. Leitch's	10 A From what he's telling me.
11 report.	11 Q Okay. Have you reviewed any medical records to
12 Q You recently received Dr. Leitch's report?	12 make sure that that's the case?
13 A No, Leitch we had from the date -- at the date	13 A No.
14 of the August 2nd report.	14 Q Would you expect somebody who's a welder
15 Q Okay. So was this copied directly from Dr.	15 journeyman to have pain in shoulders, back, arms?
16 Leitch's report?	16 A Occasionally. Not constant.
17 A No, this is taken from the interview. But, as I	17 Q And is his constant?
18 indicated earlier, when we're -- on this page where	18 A Well, it's daily.
19 people report limitations to me, I make sure that	19 Q Not constant?
20 they're consistent with any medical opinions I've seen.	20 A Right.
21 Q Okay. But what you are telling me is that this	21 Q Prolonged standing, it says he needs to keep
22 is something that Mr. Perrin told you?	22 moving.
23 A Yes.	23 A Yes.
24 Q And that was my first question, is that	24 Q Are those movements that are put in there
25 something that he told you.	25 prolonged sitting, prolonged standing?

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1	A I don't understand.	1 things that he can't do as frequently as he had as a
2	Q Sure. Under the Movement section it says	2 result of the limitation, and that's what he's reporting
3	prolonged standing and prolonged sitting. What does	3 to me.
4	that mean?	4 Q Did he have a hunting license in 2017?
5	A That means he has difficulty doing -- standing	5 A I'm sorry?
6	or sitting for a long period of time.	6 Q Did he have a hunting license in 2017?
7	Q Is there any amount? Is it hours, days? What's	7 A I have no idea.
8	the --	8 Q How about 2016?
9	A For standing he can't quantify it. He's saying	9 A I have no idea.
10	he just can't stand in one place, he needs to keep	10 Q Did he hunt in 2016 and '17?
11	moving. For sitting he wasn't sure.	11 A I have no idea.
12	Q Is that something that you asked him?	12 Q Let's just quickly take a look at Mr. Perrin's
13	A Yes.	13 report because I want to make sure that I understand it,
14	Q And had he given you an answer, would you have	14 if we can. So we'll mark it.
15	put it in there?	15 (Document marked as Deposition
16	A Yes.	16 Exhibit 9 for identification.)
17	Q Hunting and fishing is one of the psychological	17 Q Showing you what's been marked Exhibit 9, is
18	social limitations.	18 that your report with regard to Mr. Perrin?
19	A Yes.	19 A Yes, it is.
20	Q He likes to hunt and fish, but he's not hunting	20 Q Okay. And, again, you haven't seen any treating
21	and fishing?	21 physicians that have placed any kind of work
22	A He's reporting that he can't do them as much as	22 restrictions on Mr. Perrin?
23	he used to due to his limitations.	23 A That's correct.
24	Q And how much is that?	24 Q Can we go back to your -- the back of your table
25	A I don't know. I'm asking him for examples of	25 just so we can run through it.
	Page 76	Page 77
1	A Which one?	1 education. I wouldn't count that if he didn't pass a
2	Q Let's take the first one.	2 single class. However, the apprenticeship itself could
3	A Can you give me a page number?	3 count as some college.
4	Q Yes, as soon as I get there. Page 44.	4 Q So as long as he did the apprenticeship, you
5	A Okay.	5 would put him into some college?
6	Q Incidentally, what college did Mr. Perrin have?	6 A Yes.
7	A He had one year of college at the University of	7 Q Taking a look at page 44 of 54, first of all,
8	Marian, where at one time he was studying radiology, as	8 you have under post-injury 50 percent between not
9	well as whatever training he received through his	9 disabled and cognitive non-severe. We know the
10	apprenticeship.	10 cognitive non-severe is because he didn't satisfy --
11	Q Did you see any educational records from the	11 didn't answer yes to the last two in the ACS disability
12	University of Marian?	12 criteria.
13	A No.	13 A No, I counted him as saying no to all of the
14	Q Do you know whether he put in more than a month	14 other five, not just the last two.
15	at the University of Marian?	15 Q Okay. So he then qualifies because you have
16	A Yes, he reported a full year there. I don't	16 him -- you equate what Dr. Santa Maria said with the
17	know how many credits he accrued.	17 disability criteria for cognitive, but answering the
18	Q Do you know whether he passed any of his classes	18 rest of them no, he's non-severe?
19	at the University of Marian?	19 A Right, but that's not how I classified him.
20	A I don't. Again, I haven't seen the records. My	20 That's what this indicates, where I'm using statistics
21	understanding is he completed his year satisfactorily.	21 that say he's actually better off than the typical
22	Q So if he didn't pass any of those classes, does	22 person with a non-severe cognitive disability, and I'm
23	that put him in a different category other than some	23 using statistics that are halfway between no disability
24	college, no degree?	24 and non-severe.
25	A Yes and no. It would knock him out of formal	25 Q Where do those statistics come from?

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<p>1 A The American Community Survey.</p> <p>2 Q Where do I get those?</p> <p>3 A You can download them and deal with the data</p> <p>4 that's identified in the footnote at this page that goes</p> <p>5 over to page 45 for the PUMS data or you can rely upon</p> <p>6 the tabulations that I have. And you should have a</p> <p>7 document that's called Supporting Computations where the</p> <p>8 first page looks like that. I print two pages per side.</p> <p>9 Q Okay. Can I just take a look at that? And so</p> <p>10 can you tell me how you get the 50 percent?</p> <p>11 A Yes. In this document, there's going to be a</p> <p>12 page -- Oh, there it is. There will be a page further</p> <p>13 back. It will be about the fifth page in what you have.</p> <p>14 Q Okay. I don't think I have it with me.</p> <p>15 A That's fine. It's titled Participation in</p> <p>16 Employment Rates. And there I provide what the</p> <p>17 participation employment rates would be -- I'm reading</p> <p>18 upside down -- for the male, some college, with a</p> <p>19 non-severe cognitive disability in what would be column</p> <p>20 No. 2 here.</p> <p>21 In column No. 1 is what the employment rates</p> <p>22 would be for a person, male, some college, and no</p> <p>23 disability. Then in column 4 I'm merely saying I'm</p> <p>24 going to -- And, actually, I should back up. Column 3</p> <p>25 is what I use for pre-injury, but then for post-injury</p>	<p>Page 78</p> <p>1 what I do is use essentially the average of those two,</p> <p>2 putting him halfway between the rates you see in column</p> <p>3 2 and the rate you see in column 3, and that's what</p> <p>4 provides the rates I use post-injury to column 4.</p> <p>5 Q Why do you do that?</p> <p>6 A Because I believe he is better off. I don't</p> <p>7 have a chronometer where I can say he's exactly at this</p> <p>8 point on the continuum. But it's my way to adjust it to</p> <p>9 show that he is -- his likelihood of employment is</p> <p>10 better than the typical person with no disability.</p> <p>11 Q When you use a percentage like that, in any of</p> <p>12 your reports have you ever found anything other than 50</p> <p>13 percent?</p> <p>14 A Not for quite a while. I will use -- If I'm</p> <p>15 using -- There could be that I use a continuum between</p> <p>16 other points, like say between non-severe and severe.</p> <p>17 But usually I think trying to come up with something</p> <p>18 more precise would be folly. It is just a professional</p> <p>19 judgment that I believe he's somewhere between, but I</p> <p>20 use 50 percent as the best measure.</p> <p>21 Q And that's strictly a judgment call on you</p> <p>22 without any specific basis --</p> <p>23 A That's correct.</p> <p>24 Q -- to support that?</p> <p>25 A Well, specific -- There's no statistical basis</p>
<p>Page 80</p> <p>1 to derive it. The specific basis for doing it is that</p> <p>2 his limitations aren't as profound.</p> <p>3 Q What does that mean, they're not as profound?</p> <p>4 A As we've been talking about, his limitations</p> <p>5 aren't -- that Dr. Santa Maria talks about limitations</p> <p>6 to the degree that she does say with Mr. Pekkala, and I</p> <p>7 won't even talk about Mr. Holden, but if you compare the</p> <p>8 cognitive limitations she identifies for Mr. Pekkala</p> <p>9 compared to what she has for Mr. Perrin, they're</p> <p>10 generally worse off. I think that Mr. Perrin overall is</p> <p>11 better off than Mr. Pekkala.</p> <p>12 Q But you have the same finding for Mr. Pekkala?</p> <p>13 A I use the same measure, yes.</p> <p>14 Q But you think Mr. Perrin's better than</p> <p>15 Mr. Pekkala?</p> <p>16 A I do.</p> <p>17 Q So why don't you say 75 percent?</p> <p>18 A Again, it would be folly for me to say I can</p> <p>19 measure that precisely.</p> <p>20 Q It's folly to say you can measure it at all,</p> <p>21 right?</p> <p>22 A No.</p> <p>23 Q Okay. So let's take a look. For the growth and</p> <p>24 discount you have a pure offset, right?</p> <p>25 A Yes.</p>	<p>Page 81</p> <p>1 Q Okay. I just want to make sure I understand</p> <p>2 your columns correctly. So -- Well, you started at 8 of</p> <p>3 2018. So I guess you only got .02 years. But let's</p> <p>4 start at 8 of 2018, the one year.</p> <p>5 A Yes.</p> <p>6 Q Okay. So his probable life expectancy is .992?</p> <p>7 A That's the probability that he'll live to the</p> <p>8 end of that year.</p> <p>9 Q Okay. Is .992?</p> <p>10 A That's right.</p> <p>11 Q The probability that he's going to be employed</p> <p>12 is .894?</p> <p>13 A That's right.</p> <p>14 Q And the probability that he's going to work,</p> <p>15 then you times those two to get to probability of work?</p> <p>16 A That's right.</p> <p>17 Q Okay. The based earning that you came up with,</p> <p>18 59,821, what is that based upon?</p> <p>19 A That starts with, for this particular analysis,</p> <p>20 using his five years of earnings from 2011 through 2015.</p> <p>21 Q Where are you looking on your notes?</p> <p>22 A This is on page 1.</p> <p>23 Q Okay.</p> <p>24 A The report would have it in more detail. But</p> <p>25 that average comes to \$84,190. I subtract from that an</p>

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Page 82	Page 83
1 estimate of 30 percent for unreimbursed expenses.	1 So from the age of 50 -- from 45 to 46 the
2 Again, Mr. Perrin is the one that we don't have his tax	2 earnings go from 56,523 to 56,988. This tells me that's
3 return.	3 a 0.8 percent increase. If I apply that 0.8 percent
4 Q Is that pretty consistent with Mr. Pekkala, 30	4 increase against his net earnings of 58,000, I get him
5 percent?	5 to 59,404.
6 A Pekkala comes to about 28 percent.	6 Q The base earnings you're actually taking from
7 Q Okay. So roughly fairly similar?	7 how much they've earned?
8 A Yes. So that gets me to 58,933. Then I adjust	8 A Yes.
9 that \$58,000 for the typical age-related increases that	9 Q Okay. And then you're using the adjusted --
10 males with some college have as they get a little bit	10 you're coming up with the adjusted earnings by applying
11 older and initially have increases in their earnings	11 that percentage point listed in your age earnings
12 with experience, but eventually, as you'll see, they	12 profile?
13 start declining in the older ages.	13 A Correct.
14 Q And how much do you adjust it by?	14 Q Do you do anything to determine whether a
15 A It will vary on an age-by-age basis. Also,	15 journeyman receives an increase as listed in the age
16 within the Supporting Computations document you'll find	16 earnings profile or do you strictly use the age earnings
17 a page in there called Age Earnings Profiles.	17 profile?
18 Q Where does that come from?	18 A Historically, you can see increases for the
19 A That's, again, the American Community Survey for	19 journeyman there. But this isn't the economic increase
20 the percentage changes that I applied to his actual	20 that I'm measuring here, which is the increase in the
21 earnings. So here you'll see what's column No. 2 is the	21 scale that they have every year. This is more of an
22 median earnings for a male with high school -- I'm	22 increase that somebody gets by being better known in the
23 sorry, with some college and no disability. From that,	23 industry and being more likely to get the next job or
24 I can discern what the typical increase is from age to	24 get the foreman's job, something of that nature.
25 age.	25 So this isn't a measurement of how the scale
Page 84	Page 85
1 changes from year to year. It's a measurement of his	1 you expect that to increase?
2 stature within the boilermaker community.	2 A Potentially, yes, that as he gets even more
3 Q But if Mr. Perrin has already reached the	3 experience, he's going to be more valued.
4 foreman position --	4 Q So if he's been a journeyman for years and years
5 A Only part of the time. Not all the time.	5 and years, do you expect that he's going to -- it's
6 Q And how often is he foreman?	6 going to increase above the 50 percent?
7 A About half the time.	7 A Yes.
8 Q And so does this factor in that he's foreman	8 Q And what's the basis of that?
9 about half the time?	9 A Just the nature of age earnings progressions.
10 A Well, that's factored in to the \$58,000 I start	10 As people progress, they get promotions, and that's why
11 with. So that's the starting point, and I'm now just	11 you have an age earnings progression that increases.
12 taking the percentage increases from that point forward.	12 Q And that's not specific to welders and
13 Q I understand that, but you told me the	13 journeymen?
14 percentage of growth is -- represents when someone	14 A That's right.
15 becomes well-known and they move up into the next job	15 Q Adjusted earnings then are -- you're taking --
16 and it's likely that they're --	16 you're taking the .887, you're timesing it by the base
17 A I said it represents the fact that they're	17 earnings, and then you're adding in the fringe benefits
18 well-known and they can get more jobs. So they're more	18 as well? So is it like a 1.--
19 likely to find the next job quickly when there's a	19 A 49.
20 layoff at the last job and will increase the likelihood	20 Q 1.49. So does 49 represent the fringe benefits?
21 that they'll be called on as a foreman when they are	21 A Yes, 49 percent would be the fringe benefit
22 called. So both of those would tend to increase how	22 rate. So I add that on and multiply by 1.49.
23 much Mr. Perrin would earn.	23 Q Okay. So you take the .887, times it by the
24 Q Did you look at all of his history? I mean, he	24 59,821, times 1.49, to get to 79?
25 told you he's usually about 50 percent of the time. Do	25 A That's right.

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<p>1 Q And then you talk about post-injury, right?</p> <p>2 A Correct.</p> <p>3 Q That's the next column over. And the .664,</p> <p>4 where does that come from for probable employment?</p> <p>5 A That's also the ACS. That now is that fourth</p> <p>6 column that we looked at under the Participation of</p> <p>7 Employment Rate. So here we're at the age of 48, and if</p> <p>8 you follow this down, starting at age 45, that would be</p> <p>9 the participation employment rate. So from 45 to 50 we</p> <p>10 don't use the same rate.</p>	<p>1 2018, for that year, is only 66 percent?</p> <p>2 A That's right.</p> <p>3 Q And the probability that he's going to be</p> <p>4 working is 66 percent?</p> <p>5 A Yes. So it's the same formula there that we</p> <p>6 applied pre-injury and the same probability of life.</p> <p>7 That doesn't change.</p>
<p>11 Q But he's working.</p> <p>12 A Yes, the same way. I mean, he's working now.</p> <p>13 So if I adjust it for the fact that he's working, I</p> <p>14 wouldn't have the percentage reduction pre-injury or</p> <p>15 post-injury. So what I'm doing is allowing for the</p> <p>16 probability of future employment. I'm not looking at</p> <p>17 what he's doing today. And, actually, he wasn't working</p> <p>18 today. Remember, he's on layoff.</p>	<p>8 Q So what if you're wrong and what if he continues</p> <p>9 to work full time until August of '29? How does that</p> <p>10 change things?</p> <p>11 A Then working full time now until '29 --</p> <p>12 Q Or let's go to '31.</p> <p>13 A Okay. So '31, that would be 13 years out into</p> <p>14 the future. That would tell me that I've understated</p> <p>15 his worklife both pre- and post-injury, but the overall</p> <p>16 loss would go down.</p>
<p>19 Q Well, at least when you talked to him in August,</p> <p>20 but he might be working now?</p> <p>21 A Right. But this is the future probability.</p> <p>22 This isn't measuring at any one point in time. The</p> <p>23 probability is whether he's on the non-disabled side or</p> <p>24 the disabled side of finding and maintaining employment.</p>	<p>17 Q So rather than a future loss of 332, it would be</p> <p>18 a lot less than that?</p> <p>19 A It would definitely be less. I can't say</p> <p>20 exactly what it would be because I'd have to consider</p> <p>21 how I would change his future worklife from that day</p> <p>22 forward.</p>
<p>25 Q So the probability of employment for August of</p>	<p>23 Q And these numbers of pre-injury probability of</p> <p>24 employment and probability of work, those also come from</p> <p>25 ACS?</p>
Page 88	Page 89
<p>1 A The probability of employment is the ACS. The</p> <p>2 probability of work combines that with data from the</p> <p>3 official U.S. life tables.</p> <p>4 Q Okay. Right, right, we multiplied that out. So</p> <p>5 the probability of employment comes from the ACS?</p> <p>6 A Correct.</p> <p>7 Q Let me ask you this. Why do you start the</p> <p>8 losses in August of 2018 as opposed to when the injury</p> <p>9 allegedly occurred?</p> <p>10 A Because for this particular analysis my</p> <p>11 assumption is the only thing that's been impaired is</p> <p>12 future worklife.</p> <p>13 However, if we flip over to the next analysis</p> <p>14 that starts on page 46, you'll see there is under the</p> <p>15 assumption that not only has his worklife been impacted,</p> <p>16 but also his ability to earn money while he is working.</p> <p>17 So this analysis I start back on the date -- start back</p> <p>18 in 2016.</p> <p>19 Q Okay. So you have him sustaining some kind of</p> <p>20 loss from '16 to '18?</p> <p>21 A Yes.</p> <p>22 Q And it looks like it's, what, 20 -- less than</p> <p>23 20,000?</p> <p>24 A It's 17,350. You should be able to see that</p> <p>25 over on the far right.</p>	<p>1 Q Okay, 17,350. And that's by looking at his W2s?</p> <p>2 Is that what you've used?</p> <p>3 A So this is using the same earnings, that same</p> <p>4 five-year average, and using those on the pre-injury</p> <p>5 side, but, yes, using the W2s on the post-injury side,</p> <p>6 so showing what he actually did earn.</p> <p>7 Q Okay. And on the pre-injury side are you using</p> <p>8 his actual earnings?</p> <p>9 A No. So there I'm saying that five-year average</p> <p>10 that I used in the last analysis is also good for this</p> <p>11 one going backwards. I've just decreased it for the</p> <p>12 lower -- lower wages in those prior years. So they're</p> <p>13 slightly less in 2016, '17, and '18. But it's all based</p> <p>14 upon the five-year average for -- forgive me -- for 2011</p> <p>15 to 2015.</p> <p>16 Q So do you have his earnings from 2011 to 2015?</p> <p>17 A I have his wages remember. So I've got his</p> <p>18 gross wages, from which I take out an estimated expense.</p> <p>19 Q And does that include any unemployment?</p> <p>20 A It does include some periods of unemployment,</p> <p>21 yes.</p> <p>22 Q Into his gross earnings?</p> <p>23 A Yes.</p> <p>24 Q And it looks like in 2017 he actually had an</p> <p>25 increase in adjusted earnings from 2016?</p>

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	Page 90	Page 91
1	A Are you on post-injury?	
2	Q Yes.	
3	A Yes. So in 2017 -- I'm trying to recall there.	
4	Oh, yes, the 2016 number's a little skewed because	
5	that's only for a partial year. It's only for	
6	three-fourths of the year. 2017 is for a full year.	
7	Q Why is 2016 only for a partial year?	
8	A Because I'm starting the analysis in March of	
9	2016.	
10	Q Okay. And then in 2018, do you know what	
11	happened between 2017 and 2018 for there to be a	
12	decrease in adjusted earnings?	
13	A There again, the role for 2018 is a partial year	
14	until you get to August of 2018, which shows down below.	
15	Q Okay. So the base earning was 59,642 pre-injury	
16	and he had adjusted earnings of 51,543?	
17	A Correct.	
18	Q At post-injury he had a base earning of 53,867?	
19	A Yes.	
20	Q Is that a partial year?	
21	A That's what the value would be for a full year,	
22	but then I multiply it by the fraction of a year, .58,	
23	to get to what's an adjusted earnings.	
24	Q Okay. And then it looks like you gave a range,	
25	right?	
	Page 92	Page 93
1	13.331. That's 13.3 years. And post-injury says 9.653,	
2	which is almost 9.7. So what that means is that the way	
3	I compute worklife is by summing the joint probability	
4	that somebody will be alive and employed in each year.	
5	Q So that's taking the employment probability	
6	times the --	
7	A Probability of life.	
8	Q Probability of life, okay. And, again, the	
9	probability of employment post-injury is the ACS?	
10	A They both are, pre and post. It's just	
11	diminished.	
12	MS. O'BRIEN: Okay. Thanks.	
13	MR. MANNO: Are you good, Barb?	
14	MS. O'BRIEN: Yes, go ahead.	
15	EXAMINATION CONDUCTED BY MR. MANNO:	
16	Q Hi, Mr. Gibson. We've met off the record. My	
17	name is Joe Manno. I'm going to ask some questions	
18	about Mr. Perrin's report and we'll go from there.	
19	A Okay.	
20	Q Some of this will be generally applicable though	
21	I think, because I'm going to start by asking some	
22	questions about the worklife expectancy tables.	
23	When you're forecasting or predicting whether	
24	an individual will be employed in the next future time	
25	period, is it beneficial to know whether or not that	

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<p style="text-align: right;">Page 94</p> <p>1 strike that. Does your methodology -- Sorry, I'm just 2 trying to see if you can answer some of these questions 3 so I can close that.</p> <p>4 Does your methodology take into account when 5 forecasting if a disabled individual will be employed at 6 the next time period whether or not the individual is 7 currently employed?</p> <p>8 A No.</p> <p>9 Q In fact, under your methodology a disabled 10 person is always disabled?</p> <p>11 A Definitely. If I have medical opinions that 12 talk about permanent disability, I don't override that 13 medical opinion and say he's going to become well.</p> <p>14 Q But as far as their worklife expectancy, they're 15 always disabled, correct?</p> <p>16 A The statistics I apply will always be to a 17 disabled person if the person has a permanent 18 disability. I'm not going to override the medical 19 opinion and say the disability goes away.</p> <p>20 Q What I'm asking about though is as far as that 21 application to working, basically you have two buckets, 22 you have a disabled and non-disabled, correct?</p> <p>23 A Yes.</p> <p>24 Q So if somebody is disabled, they're always in 25 the disabled bucket; you're not accounting for any</p>	<p style="text-align: right;">Page 95</p> <p>1 transition where they may no longer be disabled or work 2 the same as a non-disabled person, correct?</p> <p>3 A That's right. If I don't have a medical opinion 4 that says that they're going to change, I will not 5 change it.</p> <p>6 Q Are you familiar with -- Well, let me ask this. 7 The Journal of Forensics Economics, is that a 8 peer-reviewed journal?</p> <p>9 A It is.</p> <p>10 Q Is that a reliable source in the field of 11 forensic economics?</p> <p>12 A It is.</p> <p>13 Q I'm sure you're familiar with the article by 14 Kruger and Skoog, Transitions In and Out of the Census 15 Disability?</p> <p>16 A Yes.</p> <p>17 Q Do these authors present a methodology that 18 takes into account when forecasting if a disabled 19 individual will be employed in the next period whether 20 or not the individual is currently employed?</p> <p>21 A They're talking about the mark-off method there, 22 but they're not talking about being able to forecast 23 future worklife expectancies that way.</p> <p>24 Q So they don't factor in any sort of transitional 25 probability?</p>
<p style="text-align: right;">Page 96</p> <p>1 A Are you talking about their transitions in and 2 out of disability --</p> <p>3 Q Correct?</p> <p>4 A -- or in and out of employment? Because that's 5 not what you asked.</p> <p>6 Q I'm talking about their transitions in and out 7 of disability.</p> <p>8 A Yes, they present a farcical, nonsensical 9 discussion of somebody curing. You know, they mention 10 somebody that's a paraplegic is likely going to be able 11 to transition out of disability, which is absolutely 12 absurd. If you have a medical opinion that somebody has 13 a permanent disability, there's no way an economist 14 should give any opinion that's any different from that.</p> <p>15 Q Well, their criticism actually of your opinions 16 are that you're comparing a quadriplegic in a physical 17 sense. You could potentially be comparing a 18 quadriplegic to somebody who has injured their index 19 finger, right?</p> <p>20 A No. If they're familiar at all with the 21 methodology, there's no way that the disability 22 segregation between severe and non-severe would allow me 23 to compare such an individual.</p> <p>24 Q This article is peer reviewed, correct?</p> <p>25 A It is.</p>	<p style="text-align: right;">Page 97</p> <p>1 Q And it flat out concludes that your methodology 2 is empirically invalid, correct?</p> <p>3 A That's what their conclusion is, yes.</p> <p>4 Q Let me ask you. We talked a little bit about 5 the worklife tables, and I think those are sometimes 6 called -- or maybe not even sometimes, I think they are 7 called the Gamboa-Gibson- WorkLife Tables; is that 8 right?</p> <p>9 A There are such tables. I don't think we've 10 talked about them.</p> <p>11 Q Okay. Well, let me go back. The worklife 12 tables that I think were excluded in the Baltimore 13 case --</p> <p>14 A Yes.</p> <p>15 Q -- that's -- So we did talk about them in that 16 sense, right?</p> <p>17 A Yes.</p> <p>18 Q The raw data -- And you said in this case you 19 used your raw data, you didn't use the tables, right?</p> <p>20 A That's right.</p> <p>21 Q You used the raw data to come to the table -- to 22 come up with the tables at some point, correct?</p> <p>23 A You do, but it's not customized to the degree 24 that I can do it on an individual case nature, such as 25 adjusting for a couple things. One is for putting</p>

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<p>1 somebody on a continuum. Two, for instance, as we've      2 talked about, it takes the probabilities out until      3 Mr. Perrin is 67. Normally, worklife expectancy is      4 computed until somebody is 90. And so I'm able to      5 customize that for heavier occupations where they're not      6 likely to work as long.</p> <p>7       <b>Q But the vast majority of substance is similar?</b></p> <p>8       A The computation process is similar. The data      9 will be different.</p> <p>10      <b>Q And so I want to talk about -- We've been</b>      11 <b>talking about the quadriplegic example. You and I both</b>      12 <b>know what we're talking about. But, you know, in this</b>      13 <b>paper the authors say, quote -- And I can give you the</b>      14 <b>paper if you need it, but I doubt that you need it. Let</b>      15 <b>me know if you do. They say, quote, for example, the</b>      16 <b>census ambulatory disability definition treats persons</b>      17 <b>having problems walking due to foot bunions equally with</b>      18 <b>quadriplegics. Why do you -- Do you disagree with that?</b></p> <p>19      A Yes.</p> <p>20      <b>Q Okay. Why?</b></p> <p>21      A The classification -- First of all, there's a      22 presumption there that somebody has -- would report that      23 a foot bunion gives them -- and I'm going to the      24 mobility definition because we're not using that here --      25 gives them a serious difficulty walking or climbing</p>	<p>1 stairs.      2       And so their presumption is that the foot      3 bunion -- that anybody who has a foot bunion is going to      4 apply instantly, and I would dispute that. But even      5 accepting that premises as the way that I classify the      6 data between severe and non-severe, a foot bunion does      7 not interfere with somebody's ability dressing or      8 bathing. It would not interfere with a person's ability      9 to go outside the home. Those things would not      10 obviously be -- knock somebody out of a non-severe      11 disability. And obviously a foot bunion would not --      12 would be a non-severe disability. So they would be in      13 two separate categories.</p> <p>14      <b>Q So let's take away quadriplegic, but potentially</b>      15 <b>a foot bunion -- And I understand that you're not</b>      16 <b>willing to assume that a foot bunion could substantially</b>      17 <b>limit someone's walking. But let's take the assumption</b>      18 <b>that somebody answering it -- answering this study says,</b>      19 <b>yes, my foot bunion substantially affects my walking.</b>      20 <b>And they could potentially be classified in a class of</b>      21 <b>people who are amputees, for example, who do not</b>      22 <b>necessarily have problems with self-care or going</b>      23 <b>outside the home, but they would have selected yes to</b>      24 <b>that physical classification and no to the rest of the</b>      25 <b>five?</b></p>
<p>1       A I disagree. As a rehabilitation counselor, I      2 can professionally state that a person who is an amputee      3 will most likely have difficulties with either self-care      4 or going outside the home.</p> <p>5       <b>Q But that's the problem, Doctor. It's not what</b>      6 <b>you as a vocational expert think, it's what the</b>      7 <b>individual answering the question thinks when he reads</b>      8 <b>the question, correct?</b></p> <p>9       A Yes, but it is my opinion that somebody who's      10 trained in disability, that somebody would not answer      11 with your construed hypothetical.</p> <p>12      <b>Q And what's the basis of that, other than you</b>      13 <b>just said in your experience? Other than your</b>      14 <b>experience, what's the basis of that?</b></p> <p>15      A I'm trained in rehabilitation counseling. I      16 have a Master's degree in rehabilitation counseling. I      17 am an author that has been recognized by the U.S. Census      18 Bureau on his expertise on the census data, the      19 disability data, that's published by the ACS.</p> <p>20      <b>Q So would that give you an expertise to opine as</b>      21 <b>to what every single individual with an amputation, how</b>      22 <b>they would answer that question?</b></p> <p>23      A No, it gives me the expertise to say in general      24 how people will answer on what is considered a      25 limitation and what isn't.</p>	<p>1       <b>Q In your opinion, do you believe it's reasonable</b>      2 <b>to assume that there's no probability that Mr. Perrin</b>      3 <b>will -- Well, strike that. Let me go back.</b></p> <p>4           <b>Your report assumes Mr. Perrin has a</b>      5 <b>disability, correct?</b></p> <p>6       A Yes. I mean, my -- It's more than an      7 assumption. An assumption is something that you're      8 making with no background or no support. Here, with the      9 opinions of the medical professionals I've seen, he has      10 a disability.</p> <p>11      <b>Q So based on the opinions of plaintiffs' other</b>      12 <b>experts, your -- Okay. In your opinion, do you believe</b>      13 <b>it's reasonable to assume that there's zero probability,</b>      14 <b>no chance, that he ever becomes non-disabled?</b></p> <p>15      A You're asking me to go outside my area of      16 expertise. So you're asking me to say whether the      17 medical doctors are right or wrong, or the      18 neuropsychological in this case would be right or wrong.      19 I don't have a basis for giving you that.</p> <p>20      <b>Q You don't have an expertise as a vocational</b>      21 <b>rehabilitation expert to know whether individuals get</b>      22 <b>better?</b></p> <p>23      A I know people get better, but that doesn't mean      24 that if a person who is identified as having a permanent      25 limitation overcomes that permanent limitation.</p>

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1	Q So your sole basis for saying no is Dr. Santa	1	have a disability at that time. My assumption is that
2	Maria's opinion?	2	their employment impact of persons that reported that
3	A Dr. Santa Maria and also for -- It will differ	3	disability is accurate for those persons while they have
4	by plaintiff, but Perrin, also Dr. Leitch.	4	the disability.
5	Q You haven't seen the reports yet, but what if	5	It very well could be that some of those people
6	the defense experts disagree? Do you have to consider	6	do have a temporary disability and that disability goes
7	that as well?	7	away. But I only apply it in cases where the medical
8	A I don't know. That's a question that will be	8	opinion is that person has a permanent disability.
9	somewhat up to the Rapoport firm on what they ask me to	9	Q The medical opinion of the plaintiff's expert?
10	value. I've been asked to evaluate the data that they	10	A The medical opinion that I'm working with.
11	present. If they never present me with that data,	11	Q We've talked a little bit earlier about whether
12	there's nothing I could do.	12	these worklife expectancy -- I think we talked about it
13	Q But it would be outside your expertise to say	13	in this context, correct me if I'm wrong, but whether
14	whether or not he would be disabled or not. So if you	14	the worklife expectancy figures are generally accepted
15	have two conflicting experts, one saying disabled	15	in your field?
16	forever, one saying non-disabled forever --	16	A Yes.
17	A I can't referee between the two.	17	Q Are you aware of the 2009 NAFE Survey of
18	Q Right. Going back to the Kruger article, they	18	Forensic Economists?
19	present some methodology and they present some data that	19	A Yes.
20	individuals do in fact go from disabled to non-disabled	20	Q Do you know what percentage of forensic
21	generically, correct?	21	economists favored using the Gamboa-Gibson WorkLife
22	A Yes. There very well can be that there are	22	Expectancy Tables?
23	people that answer the ACS that -- Let's say they had a	23	A I don't.
24	broken leg and that leg has laid them up for a long-term	24	Q Would it surprise you if only 17.6 percent did?
25	recuperation process and would indicate that they do	25	A No, it wouldn't.
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1	Q As opposed to 61 percent who were opposed?	1	difficulty standing in one place prior to his work at
2	Would that surprise you?	2	Fraser Shipyards?
3	A No, it doesn't.	3	A No.
4	Q I want to go back to some specific facts now	4	Q Are you aware that when Mr. Perrin injured his
5	about Mr. Perrin. And I wanted to circle back on his	5	back at Fraser like in the first week or two he worked
6	difficulty with prolonged standing and sitting. Does it	6	there, he experienced numbness in his fingers and had
7	shock you that a 350 pound man had difficulty with	7	difficulty lifting after that?
8	prolonged standing?	8	A Yes.
9	A The nature of the prolonged standing was	9	Q And are you discounting that injury simply
10	standing in one place, not being on his feet. So, yes,	10	because Mr. Perrin said he thought he'd get better?
11	it would shock me that he can't be stationary.	11	A And because, to my understanding, there's
12	Q What's the difference you're distinguishing?	12	nothing to indicate that he would not. So I -- Just as
13	A The aspersions that you're casting is that he has	13	I look for a medical opinion that identifies limitations
14	trouble being on his feet by being so heavy, and that's	14	he has now, I don't have any medical opinion that
15	not what he's reported. He's talking about his	15	indicates he would have had any limitations from that
16	difficulty as maintaining a steady position.	16	beforehand.
17	Q Have you -- Where does it say steady position on	17	Q Is there any medical opinion that said he would
18	your notes?	18	get better?
19	A It doesn't. That's what prolonged standing	19	A No.
20	refers to when I'm talking to him. When I ask him that	20	Q The absence of that doesn't make it so, correct?
21	question, I'll say do you have -- excuse me, do you have	21	A Well, the fact that he continued and improved
22	difficulty standing in one place for a long period of	22	all the time after that would seem to indicate that that
23	time. That's exactly what I would ask him.	23	was true.
24	Q Have you seen any medical records that would	24	Q But he's still alleging -- You know, your report
25	indicate he has difficulties standing -- he had	25	says he had reduced lifting ability and numbness and

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1	tingling.	1	A I'm reporting why I'm being asked to do an analysis.
2	A And that's according to Dr. Leitch as a result of the lead exposure.	3	Q Well, so on page 4, under Annual Earning Capacity, it's the third sentence, you say, after the toxic lead exposure. So you have it there again. So you're not just -- so you're repeating that same statement that you have no basis for, correct?
4	Q So what you're saying is basically we should talk to Dr. Leitch about that?	5	A I'm repeating the same cause for why I'm producing a report, that's correct.
6	A Yes.	6	Q But you have no -- you have no basis, as you just said, to conclude that any exposure he had was, quote, toxic?
7	Q In your report, and you can look at page 2, in the nature of the injury you say neuro-cognitive disorder as a result of a work-related toxic lead exposure. What is a toxic lead exposure?	7	A That's right. And I don't claim to.
8	A Exposure to lead is toxic.	8	Q Did anyone suggest that you include the word toxic in your report?
9	Q So what threshold are you considering to be toxic and non-toxic?	9	A No.
10	A I don't pretend to get that. It's my understanding that that's the nature of the claim. I'm not an expert to say that it was toxic or it was not toxic.	10	Q In that same paragraph we were just looking at, the last sentence, you're talking about some of Dr. Santa Maria's opinions with respect to Mr. Perrin's cognitive abilities. And the last sentence says, this may potentially adversely impact his overall earning potential over time. What does may potentially mean?
11	Q But you said in your report it was toxic.	11	A That was repeating Dr. Santa Maria's opinion.
12	A That's my understanding of the nature of the injury. As I indicated before, I'm not giving an opinion there.	12	Q Okay. Do you know what may potentially means?
13	Q Right. You're not giving an opinion -- You have no basis for it, right?	13	A Well, to me, the presence of the limitations
14	A That's right.		
15	Q But you include it in your report anyways.		
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1	mean that they will likely impact his overall earning potential.	1	at his job?
2	Q It doesn't say those are Dr. Santa Maria's words. You just included the words may potentially, and it's in your report. So I just wanted to know what may potentially means.	2	A No more than he did before. That means that he's recognized as somebody who has a lot of experience.
3	A Okay. I say it's Dr. Santa Maria's opinion. So I think that pretty much makes it clear that it's coming from her.	3	Q Someone who is doing a bad job wouldn't be selected as a foreman 50 percent of the time, right?
4	Q So you don't know what makes -- So we should ask Dr. Santa Maria what made him --	4	A Well, it depends. I mean, that's an accumulative experience. And so if he is experiencing less and less calls for foreman, that would come to fruition over time. It wouldn't be instantaneous.
5	MS. O'BRIEN: Him.	5	Q There's no evidence that he's getting less and less calls as foreman, correct?
6	MR. MANNO: Him.	6	A Well, I don't know about that. He is earning less money. That's why I provide two different analyses. I show that his earnings in 2016 and 2017 are substantially less than what they have been from either the five-year or the ten-year average.
7	THE WITNESS: I'm sorry, I did that again, didn't I?	7	Q Let me try it like this. Do you have any evidence that he is being called on less as a foreman today than he was, you know, prior to working at Fraser?
8	MR. MANNO: We've done it --	8	A No.
9	THE WITNESS: It's the Maria that keeps on dragging that out of me.	9	Q Do you know if Mr. Perrin's currently seeking treatment?
10	BY MR. MANNO:	10	A To my knowledge, no.
11	Q We've done it ourselves. So we should talk to Dr. Santa Maria about what may potentially means?	11	Q Do you know the last time Mr. Perrin sought medical treatment?
12	A Yes.		
13	Q Okay. If Mr. Perrin is still being selected as a foreman, I think we talked about, about 50 percent of the time, does that indicate to you that he's excelling		

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1 A I know this is discussed in his deposition. I 2 don't think I recorded it though.	1 that. But let me ask you this. Does it make any 2 difference -- Oh, sorry.
3 Q Well, let me -- I'm not trying to trick you. 4 Would it surprise you if -- Oh, I thought I had it 5 written down. Would it surprise you if it was sometime 6 in mid-2016?	3 A The fourth page I have should be the other case 4 notes.
7 A No, it wouldn't.	5 Q I'm looking at this page. Okay, the page before 6 that.
8 Q You stated that Mr. Perrin missed a week of work 9 while he was at Fraser, correct?	7 A Okay. Thank you.
10 A Yes.	8 Q So we talked about -- It says, other source of 9 injury toxic exposure, and we've talked about. I don't
11 Q Did you see any medical records that diagnosed 12 him with pneumonia during that week?	10 want to ask you about that again. But for the purpose 11 of your opinion, it really doesn't matter the source of 12 the injury, correct?
13 A I don't know if I saw the medical records. I 14 saw a discussion of it.	13 A That's right.
15 Q Do you know whether he had what was diagnosed 16 as -- Do you know whether he was diagnosed with 17 pneumonia during that week?	14 Q You had a statement in there under the Notes 15 that says his levels peaked at 42.7 age --
18 A I don't.	16 A I'm sorry, where are you?
19 Q Do you know whether that pneumonia has any 20 relation to any alleged lead exposure?	17 Q Notes. It's just below that, the box, the first 18 box.
21 A I don't.	19 A 53.7?
22 Q Sorry I'm bouncing around a bit. I'm trying 23 to -- Turn back to your evaluatee interview form for 24 Mr. Perrin. On the fourth page, source of injury's on 25 there again as toxic exposure, and we've talked about	20 Q I said 42.7. Am I on the right guy? Sorry, let 21 me make sure. Oh, no, never mind. I'll save that 22 question for -- I was looking at -- I was getting 23 confused.
	24 A Okay.
	25 Q Okay. I'll save that for later.
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1 Okay. Here's where I wanted. Right, right. 2 So here's where I'm at. Lead level 53.7, and then you 3 have it in Notes above 5 is bad. What's that mean?	1 I'm saying is a percentage of the wage. So as the wage 2 changes, that percentage also changes.
4 A That was merely as reported I believe by Dr. 5 Santa Maria. I can't state which doctor, but, to me, it 6 really doesn't play a factor in there. That's their 7 analysis of toxic exposure.	3 Q Okay. Do you calculate the \$14.20 that goes to 4 the union hall into that fringe benefit analysis?
8 Q So we should talk to -- Okay. We should talk to 9 the other doctors in the case about that?	5 A No. The only part of that that I consider in 6 there is the annuity component, which is \$4.75. That 7 goes directly to his benefit. And so that is 8 essentially 12.8 percent of the overall 40 some percent 9 that I have in here.
10 A Yes.	10 But the other parts, rather than using the full 11 amount that the employer has to pay towards his health 12 insurance, I look at the value of his health insurance 13 to him as opposed to buying it on the open market. And 14 that value is about \$18,000.
11 Q Do you know how lead is measured? Do you know 12 what above 5 is measured as?	15 Q But the annuity -- that 4.75 annuity, is that 16 going towards his pension?
13 A No.	17 A No. There's two separate contributions. One is 18 the defined contribution pension, which I analyze 19 separately, and the other is the annuity, which is like 20 a 401-K.
14 Q I want to talk about the fringe benefits you've 15 assumed for Mr. Perrin. Was it 49 percent? You can 16 correct me. What fringe benefits did you assume?	21 Q Okay. What else is part of those fringe -- So 22 we've talked about health insurance. We've talked about 23 that. What else is part of a fringe benefit? What 24 makes that number up?
17 A I used three different rates depending upon what 18 the earning capacity was. For using the five-year 19 average compared to a \$60,000 earning capacity, I have 20 49 percent. For the 10-year average it goes to 44 21 percent. And for the reduced post-injury earnings at 22 57,000 I have 50 percent.	25 A Just using the 49 percent as our working model,
23 The reason they vary has to do with the -- One 24 of the components of the fringe benefits is the 25 provision of health insurance, and that health insurance	

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1 the health insurance for \$18,000 comprises 30 percent.	1 analyze -- Maybe you're thinking of pension, which I do
2 So that's the biggest component. After that, there's	2 analyze separately. That's an additional component.
3 the annuity, which is 12.8. Then there's legally	3 But the only way I include Social Security at all is by
4 required benefits, generally legally required, which	4 the 6.2 percent.
5 would be worker's comp and unemployment insurance, at	5 Q So you include the 6.2 percent, but he's going
6 3.9. I'm not sure if that's using data from the Bureau	6 to end up getting his Social Security benefits, right?
7 of Labor Statistics. And then there's Social Security	7 A Yes.
8 contributions, which are 6.2 percent. And then from all	8 Q So he's going to -- So in this analysis you're
9 those, after I add them up, I take out 4.3 percent for	9 giving him 6.2 percent, and then you're also later on in
10 union dues. So the net of all those for the \$60,000	10 his life giving him Social Security benefits, right?
11 earning scenario is 49 percent.	11 A I'm not later giving him his Social Security.
12 Q So included in that number is -- So included in	12 Q Well, he's going to get Social Security
13 that number is the FICA amount, is that right, or no?	13 benefits?
14 A Not the full FICA. The FICA amount is Social	14 A He will. And the amount he gets will depend
15 Security plus Medicare. I exclude Medicare. But I do	15 upon how many years he works and this 6.2 percent future
16 have Social Security in there.	16 contributions.
17 Q Do you later readjust your numbers for when he	17 Q So how is that not a double recovery if you're
18 would be receiving Social Security?	18 giving him 6.2 percent now, but later on in his life
19 A No. You mean do I do a present value analysis	19 he's going to recover Social Security? Should we
20 of what his Social Security benefit would be?	20 discount -- What I'm saying is, shouldn't we discount
21 Q Right. What I guess I want to know is if we're	21 the Social Security amounts that you're giving him, the
22 double dipping by including FICA and then also including	22 6.2 percent, upfront?
23 Social Security.	23 A No, because the amount -- the 6.2 percent is
24 A No, no. Social Security, 6.2 percent, is the	24 included in the pre-injury and the post-injury fringe
25 only thing I include. So the only other thing I	25 benefit. And so what it's doing is essentially saying
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1 that by having either shorter years worked, he's going	1 for Mr. Gibson right now. Thank you.
2 to have less going into Social Security, and, therefore,	2 THE WITNESS: Can I put Perrin away?
3 decrease what his Social Security benefit is, or by	3 MS. O'BRIEN: You can. I just have a couple
4 having -- in some of the analyses, by having fewer years	4 of quick questions.
5 worked and lower earnings, he's going to have fewer	5 THE WITNESS: On Perrin?
6 contributions on the post-injury side.	6 MS. O'BRIEN: No, it's not specific to Perrin.
7 So by having it in there on the pre-injury side	7 THE WITNESS: Okay.
8 unimpaired and the post-injury side with some	8 RE-EXAMINATION CONDUCTED BY MS. O'BRIEN:
9 impairment, varying on what the impairment is, it's	9 Q As part of your work as an expert, are you asked
10 showing what the degradation is on how much is going in	10 to come up with ways to retrain somebody for a different
11 to build up his benefit.	11 position?
12 Q Did you subtract for taxes at all that	12 A Let me silence this.
13 Mr. Perrin would pay?	13 Q Or is it strictly to come up with the losses?
14 A I did not.	14 A Yes, I am not -- Yes, I mean, in a case like
15 Q Do you know how much that would lower your	15 this, it wouldn't be appropriate because I'm opining he
16 number, or numbers, or range?	16 continue working, just reduced worklife, but -- like
17 A Yes, just a ballpark. I didn't do the	17 with Mr. Holden or somebody like that.
18 computation for him, but I would say about 20 percent.	18 Then it's a question of an ethical violation,
19 Q And you'd agree he'd have to pay those taxes had	19 of wearing two hats. Where if I'm working with a person
20 he been working --	20 as somebody who's helping them as a counselor, it
21 A Yes.	21 violates -- my forensic involvement violates the
22 Q -- for that wage?	22 confidentiality and nature of the counseling
23 That's all I've got for Perrin.	23 relationship. And so the Code of Ethics of the
24 MS. O'BRIEN: Daryl, do you have anything?	24 International Association of Rehabilitation
25 MR. FUCHIHARA: No, I don't have any questions	25 Professionals prohibits me from wearing two hats.

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1 Q Okay. And I understand that, but giving 2 opinions are different than counseling someone. 3 Do you ever give opinions as to what somebody 4 can do to retrain -- For instance, even in somebody like 5 Mr. Holden, who we know he's on his phone all the time 6 and researching the Internet and doing all those kinds 7 of things, is there anything that you ever give opinions 8 in that regard?	1 Q Have they been published in a peer-reviewed 2 periodical? 3 A No, it's not peer-reviewed, but, I mean, they've 4 been published by two different sources. By Vocational 5 Economics themselves and by Trial Guides, Incorporated.
9 A In Mr. Holden's case, had I felt that he had an 10 earning capacity or had some residual ability to work 11 and earn money, then I would give an opinion on here's 12 the type of work or the level of income I think that he 13 can earn. But based upon the dire projections provided 14 by the medical experts, I did not have that opinion.	6 Q What is Trial Guides Incorporated? 7 A A legal publisher. 8 Q Does it have a particular audience? 9 A I don't know.
15 Q Okay. Let's take a look at Mr. Holden then. 16 MR. MANNO: Can I follow up on one? I have a 17 couple general that makes more sense now. 18 MS. O'BRIEN: Yes, go ahead. 19 RE-EXAMINATION BY MR. MANNO: 20 Q I never got this question out I don't think. 21 But those Gamboa-Gibson -- 22 A Gamboa-Gibson. 23 Q -- Gamboa-Gibson tables, have they been 24 published? 25 A Yes.	10 Q Would it surprise you if its particular audience 11 were plaintiffs' lawyers? 12 A No. 13 Q And Vocational -- You said the other one was 14 Vocational Rehabilitation? I'm sorry, what was the -- 15 A Vocational Economics. 16 Q Vocational Economics, is that peer reviewed? 17 A Vocational Economics is the company I work for. 18 Q Oh, I'm sorry. I'm sorry. So you're just 19 putting it online basically? 20 A Right. 21 Q Why have you not tried to peer review those 22 tables? 23 A I had no need to. 24 Q You don't think it would be easier in answering 25 questions from people like me if they were peer
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1 reviewed? 2 A We've actually had the tables replicated by a 3 research group from Northeastern University where 4 they've replicated the process and written articles 5 included in the tables themselves confirming that they 6 did what they said they would. 7 Then we've also provided the means for anybody 8 to replicate the same dollars -- the same employment 9 rates that are used to compute the worklife 10 expectancies. 11 Q Right, but it's never been published in a 12 peer-reviewed article? 13 A No. It's not an article. Nobody would publish 14 a 1,000 page document as an article. 15 Q I think Barb touched on this a little bit, but 16 when you made that 50 percent reduction for Mr. -- And 17 we talked about the 50 percent -- 18 A Continuum between a no disability and -- I'm 19 sorry. 20 Q Okay, we'll call it that. Is there any sort of 21 peer-reviewed or published literature that you looked at 22 in making that analysis? 23 A No, that was my professional judgment. 24 MR. MANNO: I'm good.	1 CONTINUED EXAMINATION CONDUCTED BY MS. O'BRIEN: 2 Q Okay. So if we can move on to Mr. Holden. 3 A We can. 4 Q Okay. The first thing that you did with 5 Mr. Holden was that -- not the first thing, but one of 6 the initial things was to get some information from 7 him -- 8 A Yes. 9 Q -- under the evaluatee information form? 10 (Document marked as Deposition 11 Exhibit 10 for identification.) 12 Q I'll show you what's been marked Exhibit 10. Is 13 that the form for Mr. Holden? 14 A It is. 15 Q Okay. I just want to run through a couple of 16 things. In the upper right-hand corner, ICF, is that 17 consent, that he's given an informed consent? 18 A It kind of is an informed consent form that we 19 send to the attorney that either the attorney or the 20 plaintiff could sign, but it's basically noting that 21 we're talking to him as a forensic expert and not as a 22 counselor. 23 Q Under education, it says high school Brookhaven 24 High School, 2000 year completed. So that means that he 25 graduated from high school?

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1	A Yes.	1 A Graduation facts, completed Carnegie units
2	Q Okay. And is that your understanding, that he	2 certificate. It doesn't give -- It doesn't fill in any
3	graduated from high school?	3 of the data.
4	A Yes.	4 Q In fact, it says completed other prescribed
5	Q Have you seen medical records -- Strike that.	5 program, right?
6	Have you seen any educational records to show	6 A It does.
7	that he didn't graduate from high school?	7 Q Okay. Did you do anything to see whether or not
8	A No.	8 Mr. Holden completed his high school?
9	Q In fact, you read his deposition where he	9 A No.
10	indicated that he graduated with honors from high	10 Q And you were not provided with these documents?
11	school?	11 A That's right.
12	A Yes.	12 Q Turning to page 2 of the evaluate information
13	Q Do you recall seeing that?	13 form, before the injury it says he was scheduled to go
14	A Yes.	14 to another shipyard in Florida, had others possible.
15	(Document marked as Deposition	15 Did he tell you what shipyard?
16	Exhibit 11 for identification.)	16 A He may have. I did not record it.
17	Q I'm going to show you Exhibit 11, which is the	17 Q Did he tell you he stopped working because of
18	transcript of Mr. Holden's high school and ask you to	18 his symptoms?
19	take a look in the right-hand corner. And if you can	19 A No. As far as Fraser you mean?
20	tell me what it says with regard to the graduation	20 Q Correct.
21	facts.	21 A I mean, eventually he's saying he can't work
22	A I'm sorry, I'm trying --	22 because of his symptoms, but as far as leaving Fraser,
23	Q In the right-hand corner.	23 no. He reported a misunderstanding or an argument with
24	A The lower right-hand corner?	24 his boss where he -- according to him at least, he left
25	Q Please.	25 voluntarily.
	Page 124	Page 125
1	Q Did you see any employment records from	1 A That he had not noted, that's correct.
2	Tradesmen with regard to -- Tradesmen or Fraser with	2 Q And, in fact, he had been in and reported that
3	regard to Mr. Holden's employment and if in fact that's	3 he had no symptoms. Do you recall seeing medical
4	what happened?	4 records to that effect?
5	A I had Tradesmen. I don't think I had anything	5 A I recall seeing discussion at least in his
6	from Fraser directly.	6 deposition. I don't recall the medical records.
7	Q Did you see anything in the file with regard to	7 Q Then on the next couple of pages there is
8	the fact that he thinks he was punished with labor	8 information about places that he worked.
9	assignments so he left?	9 A Yes.
10	A I know that was his claim. I'm trying to recall	10 Q Nothing with regard to how much he was making or
11	whether I saw that in the file. I am -- I may have	11 the benefits that he received, anything like that?
12	overlooked it, but I don't see anything dealing with	12 A That's right.
13	termination of employment. Most of the document deals	13 Q And is that because you don't have his W2s?
14	with his applications and the paperwork he filed.	14 A Well, because of that and because he didn't
15	Q Under General Notes at the bottom of that second	15 recall the information to provide it.
16	page, it says, has been unable to work since his work at	16 Q He recalled that he was the leadman and he
17	Fraser Shipyards. Is that something he told you?	17 supervised a crew at least at the -- at Trinity?
18	A Yes.	18 A Correct.
19	Q Do you know whether he had any symptoms or	19 Q Okay. Did you review Trinity records to see if
20	problems at all before he received notice that there was	20 that was the case?
21	a potential lead exposure?	21 A No.
22	A To my knowledge, no.	22 Q Under the pre-existing, which is on the next
23	Q He did not have any symptoms --	23 page, I guess page 4, do you see that?
24	A Correct.	24 A Yes.
25	Q -- until he received a letter saying potential?	25 Q Okay. Pre-existing limitations, depression as a

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1 teen. What does that tell you as far as a limitation?	1 Q Okay. He had degenerative arthritis knee pain.
2 A Nothing, other than he reported that he had	2 You say it didn't impact his work. Is that something he
3 depression then, but nobody had identified it as	3 told you?
4 limiting him in terms of the work that he did.	4 A Yes.
5 Q How about the shoulder pain bilateral due to	5 Q But he told you that with regard to his shoulder
6 rotator cuff tears?	6 pain as well?
7 A That was an ongoing complaint of his. He said	7 A Yes.
8 it didn't impact his work at all. But I did use that as	8 Q So did you factor in the degenerative arthritis
9 a potential reduction of his earnings.	9 knee pain?
10 Q But you didn't have any medical provider telling	10 A The analysis that I do that adjust for
11 you that there was a limitation in that regard?	11 pre-existing limitations are for physical limitations.
12 A Right, because the reason I used it anyhow is	12 That will adjust for limitations with any physical
13 that he reported that it was ongoing, that he still had	13 condition, such as -- or physical requirement, such as
14 that pain even without the lead exposure coming out.	14 reaching, walking, climbing stairs, things of those
15 Q Did you ask him about his depression and whether	15 natures.
16 he continued to have depression?	16 Q Okay. So if he would fall in a disability -- a
17 A And there, no, he did not.	17 pre-existing disability under the ACS?
18 Q And where do you say that?	18 A Correct.
19 A I would have recorded it if there was anything	19 Q And is that a non-severe pre-existing
20 ongoing.	20 disability?
21 Q Well, where do you say that his shoulder pain	21 A It is.
22 was ongoing?	22 Q Do you know whether that would have stayed a
23 A I guess I don't say it there. I just remember	23 non-severe disability or if it would have continued to
24 that it was, and that's why I did the analyses that it	24 get worse to make it a severe disability?
25 would be continuing.	25 A I don't. My assumption is it would be
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1 continuing on the same level it was.	1 neuro-cognitive disorder, but, rather, it's major
2 Q Is that normally how degenerative arthritis	2 neuro-cognitive disorder?
3 works?	3 A True.
4 A It would -- Without a -- Degenerative arthritis,	4 Q And is that coming out of Santa Maria's reports?
5 it says it's going to get worse, but that doesn't mean	5 A Santa Maria phrased it -- Here it is. Actually,
6 it's going to be severe.	6 I don't recall how he phrased it exactly. I mean, the
7 Q You don't know?	7 gist of what he's saying is that, but I don't see where
8 A That's right.	8 he puts that into those words.
9 Q You talked about left arm goes numb, hand cramps	9 He talks about lacking capacity to handle
10 and mild neuro-cognitive disorder. Are those things	10 employment, lacking capacity to handle his finances, all
11 from a report that you obtained or --	11 those, which would indicate a major neuro-cognitive
12 A I'm sorry, where are you?	12 disorder, but I don't see the words.
13 Q I'm sorry, I'm under the nervous system in the	13 Q Where would the mild neuro-cognitive disorder
14 brain under injury --	14 come from? Could it have been from his medical records?
15 A Oh, I see. Yes. So, I'm sorry, what was your	15 A I don't believe so. I believe the only -- the
16 question again?	16 only opinion we have at that time, well, still in terms
17 Q Sure. Are those something that came from a	17 of neuro-cognitive issues, would be Dr. Santa Maria.
18 report or --	18 Q Did you see any of his psychiatrist records?
19 A Those would come from the report. And I think	19 A I had actually Dr. Ochberg's opinion, report.
20 the discussion of his left arm going numb, the hand	20 Q Dr. Ochberg is one of the paid plaintiffs. Did
21 cramps, came from him during the interview. But the	21 you see any of the treating psychiatrist records?
22 neuro-cognitive disorder obviously came from -- well,	22 A We've already talked about that. No, I haven't.
23 actually, from Dr. Santa Maria who said it would not be	23 Q Okay. I didn't know with regard to Holden.
24 mild, that she phrased that as major.	24 A We specified for any of the plaintiffs have I
25 Q So your notes here are wrong? It's not mild	25 seen any treating doctors, and I said no.

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1 Q Okay. Well, you have medical records in your 2 folders. 3 A We've talked about those, too. Medical records 4 aren't medical opinions. 5 Q Okay. But you still review the medical records 6 I'm assuming if they come to you? 7 A Right, but they don't provide opinions on what 8 one person's limitations are. 9 Q Okay. I'm asking, though, do you believe a mild 10 neuro-cognitive disorder could have come from one of the 11 medical records that came in to you? 12 A No. 13 Q Under surgeries, multiple for muscle pain. What 14 does that mean? 15 A No, no, you're misreading it. Surgeries is 16 none. Medications is -- 17 Q Okay. Multiple? 18 A Yes. 19 Q PT completed. Is that physical therapy? 20 A Yes. 21 Q Okay. You noted that he sees a psychiatrist. 22 A Yes. 23 Q And is that something that he told you? 24 A Yes. 25 Q He applied for Social Security Disability, but	1 was rejected? 2 A Yes. 3 Q Future treatment expected, possible arm surgery 4 and knee surgery. Is that something that he told you? 5 A It is. 6 Q That's not something that you gleaned from the 7 medical records? 8 A No. 9 Q Okay. I want to go to the one that talks about 10 pain. 11 A Well, I'm sorry, I do have it in these notes 12 that Dr. Santa Maria did say major neuro-cognitive 13 disorder. So it's just a typo I believe in the other 14 notes -- I'm sorry, limitations. 15 MS. O'BRIEN: Just one second. Can we just 16 take five minutes so I can look at these quick? I just 17 want to quickly see if I can pull this out. 18 (Recess was taken.) 19 BY MS. O'BRIEN: 20 Q Turning now to the pain page. Are you there? 21 A Limitations, yes. 22 Q Okay. So the prolonged standing, is that 23 something he said, he can stand in one area for five 24 minutes? 25 A Yes.
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1 Q And he can only walk less than a block? 2 A Correct. 3 Q Did you do anything to verify either one of 4 those? 5 A No. 6 Q Strength is less than 10 pounds and limited to 1 7 pound per hand in physical therapy. What does that tell 8 you? Is that something that he told you? 9 A Yes. 10 Q Then under the psychological limitations, you 11 have depression, anxiety, negative impact kids, lost 12 interest in activities, sports with kids, and shooting. 13 What is shooting? 14 A With a gun. So, I mean, not hunting, but 15 actually -- I take it it's targets and whatever else. 16 Q But he can't do that anymore? 17 A Not necessarily that he can't, but he has 18 trouble doing it. 19 Q Depression, one of the limitations, did that 20 impact on your -- did that have any impact on your 21 analysis? 22 A It likely did, but only through the opinions of 23 Drs. Ochberg and Santa Maria in that it likely impacted 24 the opinions I gave. 25 Q And then under annual earning capacity, the	1 next -- 2 A Didn't we talk about this page before with 3 Perrin? This page isn't part of the interview itself, 4 but it will be attached to all three of the interviews. 5 This is what I prepare after the interview's over to 6 identify how I want to do the analysis. 7 Q You're talking about the pain page? 8 A No, the next page that you were starting on that 9 had the annual. So this is not part of the interview, 10 but this is something that's like an internal 11 communication on setting up the spreadsheets. 12 Q Okay. So you had one spreadsheet that says no 13 disability pre, but I know that you did some analysis 14 with a disability. 15 A Which is the next page. You don't have a next 16 page. Oh, yes, you do. 17 So, yes, you'll notice that the next page looks 18 like it's empty, but note that it says make the 19 following changes to analysis one. And so the only 20 thing that changed is using the disability status for 21 the worklife expectancy there and also for the earnings. 22 Q Okay. Under -- On the previous page you have 23 note, lack of earnings history, use proxy of welders. 24 A Correct. 25 Q What does that mean?

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1 A That when we first did our report -- We issued 2 the report on August 7th, and at that time we didn't 3 have those W2s that came in for 2014. After we got the 4 2014 we modified it and reissued the report on August 5 9th. So it was the one that was modified to have the 6 earning information.	1 2014 was definitely higher than 2013. 2 Q And what about 2015? 3 A In 2015 it dropped from 2014. 4 Q Why? 5 A I'm trying to recall. Oh, Trinity shut down. 6 He was out of work after Trinity shut down.
7 Q Okay. And then you only used the 2014? 8 A Correct. 9 Q Did you see where he claims to be a welder for 10 13 years? 11 A Yes. 12 Q Did you see evidence in his W2s where he was a 13 welder for 13 years? 14 A No. 15 Q How many years was he a welder? 16 A Yes, I can't tell. I can see places he's worked 17 for. That doesn't tell me what he did for those. But I 18 know that many of those he would not be doing welding. 19 Bear with me, I'm trying to find it. There it is. 20 So obviously he worked for West Steakhouse and 21 would not be doing work as a welder. But for the 22 majority of these, I can't tell the type of work that he 23 was doing for them. All I know is how much he earned. 24 Q Okay. And it wasn't very much up until 2014? 25 A Right. In 2013 is when it started climbing, but	7 Q Do you know when Trinity shut down? 8 A I don't. It's somewhere in the middle of the 9 year, but I don't have the exact date. 10 Q And is that something he told you, that it shut 11 down in the middle of the year? 12 A Yes. 13 Q Do you know in 2015 when he actually earned the 14 35,000? 15 A Other than the first part of the year, no, I 16 don't know how many months were included in that. And I 17 say Trinity because that's how he reported it, but the 18 W2 is called Gulf Coast Shipping. 19 Q And how do you know his job shut down in the 20 middle of the year? 21 A By what he told me. 22 Q And is that some place here? 23 A Yes. I don't have the date in there. I just 24 leave it open as a general '15. I don't give the exact 25 month because he didn't have it.
Page 136	Page 137
1 Q So it could have shut down in December; you 2 don't know? 3 A It's possible. 4 Q And so maybe all he earned then was that 35,000 5 for 2015? 6 A Potentially. 7 Q It's not something you investigated to see? 8 A That's right. 9 Q But decided still to use the 2014 number? 10 A That's right, because that's the only year I 11 know is a full year. 12 Q How do you know 2014 is a full year? 13 A Because he obviously was working there in 2013 14 and 2015. So he was employed there for -- through -- 15 starting in 2013, ending in 2015, which left him there 16 for all of 2014. 17 Q Do you know whether he was laid off at all 18 during 2014? 19 A I don't. 20 Q It's not something you asked him? 21 A That's right. 22 Q What did he do in 2016? 23 A In 2016 his only employment was through 24 Tradesmen. 25 Q And as you look at his Social Security earnings,	1 does he have other earnings besides just Tradesmen for 2 2016? 3 A In terms of Social Security, no. However, he 4 did have other earnings doing landscaping work that year 5 that showed up on a Schedule C. The Social Security 6 records that you obtained only showed W2s. It doesn't 7 show any earnings that would have come from 8 self-employment. 9 Q Well, I'm looking at a Social Security 10 Administration certificate -- certification extracted 11 from records, and mine is showing 2016 of \$9,405. 12 \$9,405. 13 A Okay. Let's see. Oh, it does show 14 self-employment. I didn't think it did. And so that is 15 consistent with what I had on the tax returns. I didn't 16 notice that it had that up there. 17 So for the tax returns I show that year as 18 being \$10,185. So they are slightly different. I don't 19 know why Social Security has a different number than 20 what he filed. 21 Q So Mr. Holden was able to earn almost \$10,000 22 doing landscaping work in 2016? 23 A That's right. 24 Q But he reported to you that he hadn't worked 25 since working at Fraser Shipyards?

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	Page 138	Page 139
1	A That's right.	1 Q When did that start?
2	Q Do you know when he did the landscaping?	2 A I don't know.
3	A No.	3 Q It certainly didn't start in 2016 if someone's
4	Q Okay. Do you know where he did the landscaping?	4 doing landscaping work, right?
5	A Other than around his home, because that's where	5 A That's correct.
6	he shows the W2, but I don't know who he did it for.	6 Q Do you have loss of earnings on your report for
7	Q Okay. You understand that Fraser Shipyards is	7 Mr. Holden in 2016?
8	up in Superior, Wisconsin?	8 A The analyses for Mr. Holden start on March 2016.
9	A I do.	9 Q Let's mark your report.
10	Q So Mr. Holden was not being honest with you when	10 (Document marked as Deposition
11	he said he has not worked since working at Fraser?	11 Exhibit 12 for identification.)
12	A I don't think he was being dishonest. I think	12 Q I'm showing you Exhibit 12. Is that the report
13	he's considering being -- working as being employed when	13 that you have for Mr. Holden?
14	he was unemployed.	14 A It is.
15	Q Did you ask him whether he had earned any money	15 Q And where do I find in your tables that you did
16	in any other position?	16 factoring in the amount of money that Mr. Holden earned
17	A I did not -- I did not break that out and ask is	17 in 2016?
18	there a possibility that maybe you were self-employed as	18 A You don't. I show starting in March of 2016
19	opposed to being an employee.	19 what he would have earned had he continued -- had he
20	Q Did you ask Mr. Holden whether he can work as a	20 worked as a welder or had he worked under his 2014
21	landscaper in 2017 or 2018?	21 earnings levels.
22	A I asked him what he could do now, and he	22 Q He doesn't have to work as a welder, because
23	reported that his current muscle weakness, shoulder,	23 your tables apply to everybody, not just welders, right?
24	knee, and cognitive limitations kept him from doing	24 The ACS looks at anybody, not just welders?
25	anything.	25 A We're talking about earnings. We're not talking
	Page 140	Page 141
1	about probabilities of employment. You're asking me	1 A It would if he was able to do that. However, it
2	earnings.	2 would be contrary to the medical opinions on what he
3	Q Okay. Let me ask you earnings then. Did you	3 should be doing.
4	factor in anywhere with regard to his earnings the fact	4 Q Because they basically find he's got no strength
5	that he earned \$10,000 in 2016?	5 and he can't do anything?
6	A I did not.	6 A Well, I don't know that they basically find he
7	Q Okay. So is your table that you came up with	7 has no strength, but he has no capacity to be doing any
8	erroneous with regard to 2016?	8 work.
9	A It would be.	9 Q Did you read Dr. Santa Maria's reports and his
10	Q Did you explore at all with him about his	10 testing where he basically finds he has less than 1
11	ability to landscape?	11 percent of the strength of anybody?
12	A I did not. His abilities to do anything were	12 A I don't know that that's how I would phrase it,
13	called into question pretty severely by both experts	13 but he definitely talked about decreased strength.
14	that I saw. And my discussion with him confirmed that	14 Q Okay. Would a landscaper in your expert opinion
15	he found his ability to find and maintain constant	15 as a vocational expert be someone who has a substantial
16	employment was non-existing.	16 decrease in strength?
17	Q Okay. But you got the records, and the records	17 A For most landscaping activities, no.
18	show that he did maintain employment in 2016.	18 Q Okay. Now that you know that, would that be
19	A For part of the year, yes. That he maintained	19 something that you'd want to explore to see if
20	self-employment.	20 Mr. Holden could do some landscaping work?
21	Q And you didn't explore that whatsoever to see if	21 A No.
22	that was something that he could continue to do?	22 Q You don't think he can do any landscaping work
23	A That's right.	23 based upon Dr. Santa Maria's report and Dr. Ochberg's
24	Q Because that would reduce his loss of earnings,	24 report?
25	wouldn't it, if he continued to work as a landscaper?	25 A I don't think he should be attempting to do any

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1 employment such as that based upon the reports.	1 Q Okay. And so if Dr. Santa Maria did not use
2 Q Based upon the reports?	2 those kinds of tests in his testing of Mr. Holden, we
3 A That's right.	3 might have a credibility issue here?
4 Q So we know that Mr. Holden did not graduate from	4 A Potentially. You'd have to ask Dr. Santa Maria
5 high school, even though he told you he did. We know	5 on how that impacts his opinion. I'm relying upon his
6 that he -- contrary to what he told you, he couldn't	6 opinion.
7 work since Fraser, we know that he did, right?	7 Q You interviewed Mr. Holden, right?
8 A He did.	8 A I did.
9 Q Do you ever factor credibility into your	9 Q You spent an hour with him?
10 opinions when you come up with an opinion that someone	10 A Yes.
11 has a loss of earnings of 900 to \$1.3 million?	11 Q You took notes on what he told you?
12 A I do. I rely upon Dr. Santa Maria especially,	12 A Yes.
13 who has done extensive testing of Mr. Holden, who has --	13 Q You went through the records that were provided
14 I'm trying to think of the phrases she would use. But	14 to you?
15 there's building components to the tests that she	15 A Yes.
16 applies that tests to the credibility and the	16 Q You know that there were things that he told you
17 believability of the scores that she's obtaining.	17 that were not credible?
18 Q And when you say that, what is the basis of you	18 A Yes.
19 saying that there are things that she's using to test	19 Q Okay. Did you do anything at that point to
20 the credibility?	20 follow up with Dr. Santa Maria or Dr. Ochberg or anybody
21 A Just my knowledge of neuropsychological tests	21 with regard to Mr. Holden to see if what he had told you
22 that I've seen in the past.	22 was credible before you give an opinion that he has a
23 Q What are those?	23 potential loss of \$1.3 million?
24 A I can't tell you. Again, that's why I'm saying	24 A I saw no need to.
25 you need to talk to Dr. Santa Maria.	25 Q And, again, just so I understand, you used 2014,
Page 144	Page 145
1 even though you don't know for sure whether 2015 was	1 A In -- That's not necessarily present value, but
2 payment and earnings for a full year or a partial year?	2 that's in common year terms.
3 A That's right.	3 Q How about 2007?
4 Q Is there any reason why you didn't go back	4 A In 2007 he earned \$16,000, which potentially
5 further and average out based upon five years or 10	5 could have been a full year.
6 years?	6 Q How about 2013?
7 A I'm looking for a full year's worth of earnings.	7 A 2013 was when he started at Gulf Coast, or,
8 2014 was the best measure that I can see that was a full	8 forgive me, what's the name that he referred to it as?
9 year of earnings. I take a full year and then decrease	9 Trinity. And that was the bulk of his earnings. But he
10 that for the probability of not working.	10 also had two other employers that year that totaled 29,
11 So the probability of employment and worklife	11 almost 30,000.
12 expectancy will then take whatever I use for a full year	12 Q And so did you factor in that number? Did you
13 of earning and decrease for the fact that he's likely	13 use that number?
14 not to be working full years.	14 A No. As I explained before, because he started
15 Q How do you know these other years were not full	15 at Gulf Coast in 2013, ended in 2015, couldn't remember
16 year earnings?	16 the exact start date, but it's felt that they are
17 A Because working for a minimum wage for a full	17 partial years and I used the full year.
18 year would pay more than he had in many of these other	18 Q Where does it say he felt it was partial years?
19 years.	19 A Because he wasn't able to give the exact date.
20 Q Okay. Let's go through them and tell me which	20 If he knew the exact date that he started, he would have
21 ones. What about 2005?	21 provided it, or I would have written them down.
22 A In 2005 he made \$23,000. That could be a full	22 Q So you just assumed that it wasn't a full year?
23 year. If I restated that to 2018 terms, it would	23 A Yes.
24 probably be about \$40,000 or more.	24 Q You have no idea if that's true?
25 Q For present value?	25 A I have a reasonable idea that that's true

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1 because he said he could not think of the date and he 2 thought it was partial years. 3 Q How many of these analyses do you do in a month? 4 A A month, it will vary widely. But in a year I 5 do about 120 new cases, but not all of them would be 6 loss of earnings cases. But 120 new cases in total. 7 Q Okay. So is that about, what, 10 a month? 8 A If averaged, yes. I mean, again, it would vary 9 widely from month to month. 10 Q Okay. And you interviewed Mr. Holden back in 11 July? 12 A Yes. 13 Q And you recall your conversation with Mr. Holden 14 and the fact that he told you he thought he started in 15 the middle of the year? 16 A That's what we've established. I know how I 17 take my notes. 18 If he knows a month, I will write the month 19 down. If he says, oh, I started sometime in 2013, I 20 can't remember the exact date, that means I don't have 21 an exact date. I will put 2013 in general. If he knew 22 that he was there for the full year, I would definitely 23 put January 2013. 24 Q Similarly, you haven't seen any doctor that 25 placed any work restrictions on Mr. Holden?	1 A That's right. 2 Q Did you see any doctors' records that showed 3 that Mr. Holden got better when he took his medication 4 and was able to function? 5 A No, no. I mean, there may be -- I do have 6 medical records in here, but I don't see an evaluation 7 of an improvement over time. 8 But it's the potential that some of the records 9 cover medications. And I know that Dr. -- maybe it's 10 both doctors, but at least Dr. Santa Maria talks about 11 the need of calibrating his medication because they 12 don't believe he's reliable to remember what he's taking 13 and when he's taking it. 14 Q Did you review Dr. Ochberg's deposition? 15 A No, I haven't seen depositions for Ochberg or 16 Santa Maria. 17 Q Would you want to see those? 18 A Yes. 19 Q For what purpose? 20 A To confirm that the information I'm gleaning 21 from the reports is correct. 22 Q Okay. And if it's not correct, that would 23 affect your numbers? 24 A Maybe. 25 Q Well, certainly if Mr. Holden is able to work
Page 148	Page 149
1 like he was in 2016, that affects your numbers? 2 A Yes. 3 Q Okay. That is all I have. I have one other one 4 for Perrin, but we'll get to that. 5 A You mean Pekkala, right? 6 Q I have one for Perrin still to go back to. I'm 7 sorry, that was my fault. 8 MR. MANNO: I have one to go back to. We'll 9 do that at the end. 10 MS. O'BRIEN: Okay. 11 MR. MANNO: Ready to keep going? 12 THE WITNESS: Yes. 13 CONTINUED EXAMINATION CONDUCTED BY MR. MANNO: 14 Q Okay. I'm going to -- Do you have the 2016 tax 15 return in front of you of Mr. Holden? I have a copy 16 here. 17 MS. O'BRIEN: I have an extra copy. 18 MR. MANNO: I have two copies actually because 19 I'm going to mark it as an exhibit. 20 THE WITNESS: I do have it. 21 MR. MANNO: Can you mark this as 13. 22 (Document marked as Deposition 23 Exhibit 13 for identification.) 24 BY MR. MANNO: 25 Q You can look at that. Is Exhibit 13 the tax	1 return that is in your file? 2 A Yes. 3 Q I want you to go ahead and turn to the Schedule 4 C that Ms. O'Brien had talked about earlier. 5 A Okay. 6 Q Part 2, under expenses, there's line 8, 7 advertising. 8 A Yes. 9 Q \$600? 10 A Yes. 11 Q What is that? 12 A I don't know. I can't tell you specifically 13 what he spent on any of these items, but that should 14 cover if he put an ad in the paper or if he just 15 distributed leaflets, anything along those lines. 16 Q So it's not just that he's working on 17 landscaping in 2016, he's actually advertising for his 18 business in 2016, correct? 19 A He's trying to get work, yes. 20 Q Do you know if he's done any landscaping in 21 2017? 22 A Not to my knowledge. 23 Q Have you seen any 2017 tax returns? 24 A No. 25 Q Do you know if he's done any landscaping in

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1 2018?	1 Q Do you know -- I don't think you know the answer
2 A Not to my knowledge.	2 to this, but you don't know when the defendants got a
3 Q I want to mark this as an exhibit.	3 copy of Mr. Holden's tax returns, do you?
4 (Document marked as Deposition	4 A No.
5 Exhibit 14 for identification.)	5 Q I should go back to my outline before I get
6 Q So I'm handing you what's been marked as Exhibit	6 mixed up.
7 14. Exhibit 14 appears to be correspondence from Mary	7 We talked a little bit about you used 2014, I
8 Reid, who works for Rapoport Law Office to you, correct?	8 think you said, because it was the only one you thought
9 A Yes.	9 was a full year of earnings, correct?
10 Q What's the date of that?	10 A Correct.
11 A July 26th of 2018.	11 Q So, in your opinion, if Mr. Holden had only one
12 Q Okay. And that correspondence is just sending	12 full year of earnings in this large timespan where he
13 you Mr. Holden's tax returns or at least a partial	13 alleges to have been a welder, how is it reasonable for
14 version of the tax returns?	14 you to assume that he would continue to have four years
15 A Correct.	15 of earnings the rest of his life?
16 Q So as of July 26, 2018, plaintiffs' counsel had	16 A I'm looking at modern times. I mean, I don't
17 a copy of Mr. Holden's tax returns, correct?	17 base earnings going back to the beginning of time.
18 A Yes, I'm trying to remember -- I believe	18 There are years and years that could be full years.
19 that's -- that that's '15, '16. I can't say. It	19 For instance, I think it was 2005 that your
20 doesn't identify which ones they were, but the only tax	20 co-counsel mentioned where I said that if I use that and
21 returns I have would be '15, '16.	21 increase it, it would probably be close to \$40,000. But
22 Q And that's fine. I'm actually trying to make a	22 then using modern times, it shows what he was
23 broader question. So they had some sort of tax returns	23 demonstrating in earning capacity starting with Gulf
24 as of at least July 26th, 2018, correct?	24 Coast or Trinity Yards -- Trinity Yachts, I'm sorry,
25 A Yes.	25 whichever one it was, earning pretty consistently there,
Page 152	Page 153
1 and then having the full year in 2014, I felt it was	1 starting out with no disability of being gone 15 percent
2 reasonable.	2 of the year to start with and then increasing as he
3 Q So the Gulf Coast Shipyards, you say earning	3 ages. The one that allows for a lesser likelihood with
4 pretty consistently. That was essentially two to three	4 a physical disability allows for a 30 percent gap to
5 years --	5 start with.
6 A Yes.	6 Q So part of that gap is because you're saying he
7 Q -- of his career?	7 has a physical disability, correct?
8 A Yes.	8 A In the latter one, yes.
9 Q Prior to that, though, very inconsistent	9 Q In the latter one. In the first one you just
10 earnings, correct?	10 picked 15 percent?
11 A Yes.	11 A That's right.
12 Q But your analysis assumes he has consistent	12 Q Why did you pick 15 percent?
13 earnings, correct?	13 A Because that's -- I didn't pick 15 percent.
14 A No. I take those earnings and then reduce them,	14 That's what the statistics are for no disability.
15 as I talked about before, for the periods or gaps of	15 Q Oh, okay. So you're comparing Mr. Holden to
16 employment he's likely to have.	16 every non-disabled male with the same education as him?
17 MS. O'BRIEN: How big of gaps?	17 A That's right.
18 THE WITNESS: Well, it depends on the	18 Q Does every non-disabled male, the same education
19 analysis. My reports, going back to the worklife	19 as him, have such an inconsistent earning history?
20 probability schedules, use -- The two that deal with the	20 A No.
21 2014 earnings will probably be the easiest to look at	21 MS. O'BRIEN: So to follow, that's not
22 right now.	22 factored in then to your numbers?
23 BY MR. MANNO:	23 THE WITNESS: That's factored in if you
24 Q What page are you on now?	24 attribute the fact -- the possibility that the reason
25 A 48 and 50. And there I'm allowing for gaps	25 that he was as inconsistent is due to pre-existing

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1    limitations, which is what the second analysis does by 2    using the -- 3            MS. O'BRIEN: But the first one does not? 4            THE WITNESS: That's right. 5    BY MR. MANNO: 6            Q   In here, the second one only does because of 7    what you allege is an injury that he has now, right? 8            A   No. 9            Q   The second analysis is an injury, shoulder and 10   knee, right? 11          A   Yes, but not that he had because of the 12   exposure. 13          Q   I'm just saying, you're saying -- You don't know 14   he had that injury and that's why he was missing work 15   previously? 16          A   Well, I am -- That's what that whole analysis is 17   saying, is that he had a pre-existing limitation and 18   that that did impact him in the past and will impact him 19   in the future. 20          Q   But what I'm saying is, you have no idea whether 21   he had a pre-existing shoulder injury in the year 2010? 22          A   That's right. 23          Q   He could have just decided he didn't want to 24   work as much that year, right? 25          A   Potentially.	1            Q   Did you ask him? 2            A   About 2010? No. 3            Q   What about 2011, 2012, 2013? 4            A   I asked him about the recent years, 2013, 2012, 5    going forward. 6            Q   And, conveniently, the reason here was the 7    highest -- the reason here you used was the highest 8   year, right? 9            A   A full year of employment will always be higher 10   than a partial year. 11          MS. O'BRIEN: You don't know that. 12   BY MR. MANNO: 13          Q   I wanted to go to your report. And we've talked 14   about the pre -- And we're calling the pre-existing 15   disability the shoulder and the knee, right, just for 16   clarity? 17          A   Yes. 18          Q   The pre-lead exposure? 19          A   Yes. 20          Q   Going to your report, under Reported Problems, 21   there's a few I want to talk to you about. 22          For example, constant pain, how do you know 23   that the constant pain isn't related to his shoulder or 24   his knee? 25          A   I don't. If there are pre-existing limitations
Page 156	Page 157
1    and that pain's continuing, there's no way that I have 2   to segregate how much of that or what percentage of that 3   had to do with those limitations. 4          Q   Okay. I'm going to ask a few -- the same 5   question for walking on even ground. You don't know 6   that that's related to the pre-existing or what you're 7   calling a post-injury, right? 8          A   That's right. 9          Q   Climbing stairs and ladders, the same thing, 10   correct? 11          A   Yes. 12          Q   A lifting limitation of less than 10 pounds, the 13   same thing, correct? 14          A   Yes. Definitely I can't segregate. I'm 15   confident that there is a component that's identified by 16   the doctors that has to do with what they feel is the 17   lead exposure, but, you're right, that if there is a 18   pre-existing limitation, that would also come into play. 19          Q   Have you seen any records from his treating 20   physicians that put a 10 pound -- specifically his 21   rotator cuff physician, that puts a lifting limitation 22   of less than 10 pounds on him? 23          A   Again, I've seen no opinions from treating 24   doctors. 25          Q   Limited range of motion. The same question, the	1    same answer? 2          A   Yes. 3          Q   Limited use of both hands and arms. The same 4   question, the same answer? 5          A   Yes. 6          Q   Limited grip strength. The same question, the 7   same answer? 8          A   Yes. 9          Q   Holding/carrying items. The same question, the 10   same answer? 11          A   Yes. 12          Q   Working overhead. Certainly the same question, 13   the same answer? 14          A   Yes. 15          Q   What's cold intolerance? 16          A   Meaning that exposure to cold weather makes -- 17   exacerbates his complaints. 18          Q   The same question, the same answer for cold 19   intolerance? 20          A   Yes. 21          Q   If you used the same statements that you do in 22   Mr. Perrin's report about toxic lead exposure and high 23   levels of lead, would the answers be the same that we 24   talked about for Mr. Perrin as they do for Mr. Holden? 25          A   Yes. I do use the same statement, don't I?

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	Page 158	Page 159
1	Q You do.	1 Q Does that appear to be consistent with some of
2	A Okay.	2 the other misstatements he may have made in this
3	Q Memorial Medical Oncology at Cedar Lake medical	3 litigation?
4	records, are those in your file?	4 A I mean, I don't really know what he said about
5	A If they are, they're not titled with that name.	5 lead levels. I didn't pay any attention to what -- I
6	So they could be.	6 wouldn't have asked him about lead levels.
7	Q Well, I'm going to show you these. You may have	7 Q The question is not about his lead level itself,
8	seen them, you may have not. We'll make this an	8 but about him trying to get his provider to put a
9	exhibit.	9 different number down than what's actually there.
10	(Document marked as Deposition	10 A And I can't speak to any other examples where he
11	Exhibit 15 for identification.)	11 may have done that.
12	Q I want you to turn to I think it's the back	12 Q Can you think of any other examples where he may
13	page. There's an addendum by Ashley Miller, RN,	13 be misleading people?
14	November 21st, 2016.	14 A No.
15	A Okay.	15 Q Let's mark this one.
16	Q And it states, plaintiff states he needs a	16 (Document marked as Deposition
17	letter stating that his lead level is higher now than	17 Exhibit 16 for identification.)
18	when he started working on his job. I advised him that	18 Q This is a Memorial Physician Clinics Neurology
19	we can only write a letter stating the facts based on	19 Pass Road record. And it looks like the physician or
20	the information we have. His lead levels are in normal	20 the person signing it is Diane Ross, MD.
21	range.	21 A Oh, you're right. I was looking at reviewed by.
22	So in November of 2016 Mr. Holden's calling his	22 Yes.
23	medical providers trying to get them to report a higher	23 Q And he basically -- What it's saying, I'll read
24	blood lead level than he actually has, correct?	24 it here, patient came back in yesterday to report there
25	A Yes.	25 was a typo in the ROS which was correct. The typing
	Page 160	Page 161
1	came out no SOB and should have said he had SOB. And he	1 find typos, you don't think he's able to do some sort of
2	goes on to complain about another error that's in his	2 job?
3	medical record.	3 A I would, again, accept the limitations as
4	So the gist of this record from this physician	4 identified by the doctor.
5	is that Mr. Holden's reading his medical records and	5 Q He could have been an editor, right?
6	coming back to her with typos in the records, correct?	6 A I don't think so. At one point you're claiming
7	A Yes.	7 he has less education than he claimed and now you're
8	Q Is that consistent with somebody who has such a	8 saying he'd be an editor.
9	major cognitive disability that he can no longer work,	9 Q Did you review in his deposition where he was
10	that he's able to catch typos in a physician's medical	10 able to get from Mississippi to Chicago?
11	record?	11 A I recall that he did. I don't recall any
12	A That would indicate somebody who has trouble	12 specifics on that at all.
13	with perseverance, which would be difficulty with a	13 Q Is that significant to you, that someone's able
14	brain injury.	14 to get on a plane, maybe change planes, maybe not, get
15	Q So catching typos in medical records is	15 there on time, get to his destination, take his
16	considered such a major cognitive disability that he	16 deposition, get back to the plane, get back home? Is
17	can't work anymore?	17 that significant to you as far as someone's cognitive
18	A I didn't say that. Made him unable to work	18 ability?
19	anymore. There are other disabilities other than that,	19 A No.
20	other limitations, but I'm saying that this is not	20 Q How is that not significant?
21	inconsistent from somebody who has significant cognitive	21 A How is it? I don't understand.
22	limitations.	22 Q Well, if someone's able -- Let me do it this
23	Q How so?	23 way. If somebody's able to do all of that, wouldn't
24	A As I said, it's an indication of perseverance.	24 they be able to do some sort of job?
25	Q Okay. But if he's able to go on and read and	25 A I don't know the equation of getting on a plane

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1 on time to being able to work and earn money.	1 a job, yes.
2 Q Being able to navigate an airport.	2 Q Or their motivation to go to work?
3 A I'm sorry, I don't see that.	3 A That's right.
4 Q So someone who is 100 percent disabled and	4 Q Did you factor -- did you factor in the fact
5 cannot work you're saying can do these things with no	5 that Mr. Holden takes hydrocodone into your worklife
6 problem?	6 expectancy analysis?
7 A I didn't say they can do them with no problem,	7 A No.
8 but I don't see any inconsistency with the fact that he	8 Q And it's the same type of question with the
9 was able to meet his schedule.	9 marijuana, but that could be relevant if it affected his
10 Q Did you factor in your analysis Mr. Holden's use	10 ability to or motivation to work --
11 of marijuana?	11 A That's right.
12 A I didn't.	12 Q -- correct?
13 Q Do you think his use of marijuana would be	13 Your fringe benefit analysis of Mr. Holden was
14 relevant to his worklife expectancy?	14 24.1 percent I think?
15 A It could. I have nothing that would indicate	15 A For one of the analysis. I think it was 24.1
16 that it was a problem. But if it was a problem that	16 based upon his 2014 earnings, but 21.4 based upon the
17 impacted his performance on the job or his dependability	17 proxy.
18 as far as being on the job, then, yes.	18 Q Why is the -- why is there a difference?
19 Q What would you define as a problem?	19 A The difference comes in that in the proxy
20 A That he was -- had habitual warnings,	20 obviously we don't know who the employer would be. So
21 terminations due to that condition.	21 for that analysis I'm just using the average rate of
22 Q What if somebody -- So what if somebody was	22 fringe benefits paid to United States non-union workers
23 smoking marijuana and just wasn't motivated to go find a	23 from the Bureau of Labor Statistics.
24 job, would that affect their worklife expectancy?	24 For the 2014, that was based on Trinity Yachts,
25 A It would definitely affect their ability to find	25 based on his report to me that he had health insurance
Page 164	Page 165
1 that I valued for an individual at \$4,348, which comes	1 A That's what he said, yes.
2 to about 11 percent of his earnings.	2 Q Do you know if he actually made the match?
3 And then I factored in the other components of	3 A He said he did, but I don't have any detailed
4 retirement, legally required and Social Security and the	4 earnings records that show that.
5 national average. So doing that raises the overall	5 Q Did you see anything on his -- You do have some
6 health benefit up slightly, which raises the overall	6 tax returns. Did you see anything on his tax returns
7 fringe benefits.	7 that he claimed a contribution to 401-K?
8 Q Did you include -- There's a note in your report	8 A Tax returns won't show that.
9 about 401-K retirement. Did you factor that into --	9 Q Well, okay. Sorry. You have some W2s. Did you
10 A I include retirement, a contribution of	10 see anything on the W2s?
11 retirement, and that's just at the national average. I	11 A Yes, W2, on the other hand, does support that
12 don't know -- If you're talking about my notes for	12 there's something there. There is a difference between
13 Trinity Yachts --	13 his Social Security wages and his taxable wages. The
14 Q And your report just says 24.1 percent	14 difference is only \$160, but it does indicate that the
15 accounting for employer contributions to single health	15 employer is contributing in to a retirement plan. He
16 insurance.	16 has a check in the box at 13 there. He doesn't say how
17 A Right.	17 much the employer contributes.
18 Q I'm sorry, that was fast. And 401-K retirement	18 Q Okay. So if it's a match plan, it would be
19 plan.	19 logical to say 160 bucks?
20 A So he reported that he did have a 401-K that the	20 A Not necessarily. There's two types of matches.
21 employer contributed to. He did not know the amount	21 One is like exactly how you're describing it. It is a
22 that they contributed. So rather than speculate on what	22 match based upon how much the employee puts in. The
23 it was, I just used the national average.	23 other is more of a profit sharing where the employer
24 Q Was it -- I mean, do you know whether it was a	24 puts in regardless of how much the employee puts in.
25 match at that employer?	25 Q We don't know which plan it is?

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1 A That's right.	1 to maintain employment.
2 Q So the national average, what was that	2 Q So if some defense experts finds a problem with
3 percentage?	3 those, that may call into question that, that he has
4 A 4.1 I think.	4 such a profound injury, right?
5 Q And we just don't know one way or another	5 A Are you asking should an expert say those
6 whether he actually had employers contribute 4.1 percent	6 limitations aren't as bad as what Santa Maria and
7 to his 401-K or not, right?	7 Ochberg said, then that can change that opinion?
8 A Yes.	8 Q Right.
9 Q All right. Are you aware that Mr. Holden's not	9 A Yes.
10 currently under any sort of supervision or group home	10 Q Or non-existent?
11 assistance?	11 A Yes.
12 A Yes.	12 MR. MANNO: Okay. That's all I have on
13 Q You haven't done any sort of vocational analysis	13 Holden.
14 for Mr. Holden, have you?	14 Do you want to ask the clean-up Perrin
15 A I mean --	15 questions, or do you want to do it at the end?
16 Q And if you're concerned about answering -- Let	16 MS. O'BRIEN: I don't care. Let's see if --
17 me rephrase it because I think you're concerned about --	17 MR. MANNO: Oh, yes.
18 Well, let me ask it this way. You haven't done any sort	18 MS. O'BRIEN: Do you have, Daryl, any
19 of an analysis to say Mr. Holden could do these type of	19 questions?
20 jobs based on this disability or he could do this type	20 MR. FUCHIHARA: No questions at this point.
21 of rehab to get back into the workforce, right?	21 Thanks.
22 A I have, but only to the degree that says that	22 THE WITNESS: So do I put Holden away?
23 anybody with the profound limitations identified by Dr.	23 MS. O'BRIEN: I just wanted to quickly ask you
24 Santa Maria and Ochberg, I keep forgetting his name, and	24 about the lifecare plan. I'm looking for my copy of the
25 also outlined within the lifecare plan would not be able	25 lifecare plan.
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1 MR. MANNO: I've got it here.	1 Q You just have a few of them. How is it that you
2 CONTINUED EXAMINATION BY MS. O'BRIEN:	2 got certain ones and not others?
3 Q Okay. One quick question. In your file are the	3 A I don't really request medical records because
4 OSHA sampling results. Did you use those at all in	4 I'm looking for opinions. She needs medical records to
5 forming any of your opinions?	5 determine that the -- the type of treatment in the past
6 A Oh, no, no. That's right. No, I did not.	6 and to make that consistent with what she's projecting
7 Q So one of the things -- Let's mark this.	7 in the future. So it's common for a lifecare planner to
8 (Document marked as Deposition	8 rely heavily on medical records while I usually don't.
9 Exhibit 17 for identification.)	9 Q And I understand that. I'm wondering why you
10 Q One of the things that you were asked to do for	10 have certain records and didn't get other records?
11 Mr. Holden was to do a present value of his future	11 A I can't explain.
12 health and medical care costs?	12 Q It's not something that you said don't give me
13 A Yes.	13 the records and they still showed up?
14 Q Okay. And that is your report in that regard as	14 A Well, actually, in the -- There's a form we
15 Exhibit 17?	15 looked at earlier where we send the attorney saying
16 A Yes.	16 here's ideally what we'd like and we suggest there don't
17 Q So to do that, did you review the lifecare plan	17 send treatment records.
18 prepared by Nurse Schwieger?	18 Q In any event, when you were reviewing Dr. --
19 A Yes.	19 Strike that.
20 Q And in there she does an extensive review of all	20 When you were reviewing Nurse Schwieger's
21 the medical records that at least she has, correct?	21 report, you saw some of the same medical entries that
22 A Correct.	22 we've discussed here today, right?
23 Q You don't have those same medical records in	23 A Yes.
24 your file?	24 Q The fact that he's calling and saying there's a
25 A That's right.	25 typo and all that kind of stuff, right?

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1	A Yes.	1 psychiatrist, who's saying mild cognitive impairment
2	Oh, did we drop him?	2 versus severe cognitive impairment, but that didn't
3	MS. O'BRIEN: Yes. Are you on?	3 factor into your opinions in this case?
4	MR. FUCHIHARA: Hello.	4 A That's right.
5	MS. O'BRIEN: Okay, sorry. I don't know what	5 Q Did you review in here where he was refused
6	happened.	6 medication because of his history of a drug habit?
7	MR. FUCHIHARA: I think my phone might have	7 A Yes.
8	timed out at four hours there and it automatically	8 Q Did you factor it at all into your opinion?
9	dropped the call.	9 A No.
10	BY MS. O'BRIEN:	10 Q Okay. And when you then made the determination
11	Q Okay. You would have seen the note in her	11 with regard to the present value for his future health
12	report that Mr. Holden is an extremely poor historian?	12 and medical care costs, it's the same amount that Nurse
13	A Yes.	13 Schwieger came up with?
14	Q You would have seen the note, which I think I	14 A No. The current value is. So I give two
15	asked you about earlier, the fact that he's on	15 different numbers: One is the current cost, which
16	medication, he's feeling better and doing much better?	16 should be identical to what Nurse Schwieger has, and
17	A Yes, yes.	17 then the present value, which would be slightly -- Oh,
18	Q It didn't factor into your opinions because you	18 actually, I take that back. It is very slightly
19	only based it on Santa Maria and Ochberg?	19 different from hers.
20	A Yes.	20 But, in this particular case, the vast
21	Q And you would have noted, and perhaps this is	21 majority of her items fall within either the
22	where it came from in your evaluatee form, where Dr. James	22 professional services item or, more importantly, the
23	stated that there's mild cognitive impairment?	23 compensation index, and both of those would be a pure
24	A Oh, possibly.	24 offset. But there are some costs that result in a
25	Q So at least we have another doctor, a	25 slight variation from her current cost when I get to
	Page 172	Page 173
1	present value.	1 A It depends on the item.
2	Q A thousand dollars?	2 Q And the only one that you reduce, it looks like,
3	A Yes.	3 is the --
4	Q So I'm correct if I say the numbers you came up	4 A I reduce anything that's identified as medical
5	with for the present value of the future health and	5 commodities or general items. In Ms. Schwieger's plan,
6	medical care costs are virtually the same that Nurse	6 she doesn't have anything that would qualify other than
7	Schwieger came up with --	7 that that I would discount. But those are all small
8	A Virtually, yes.	8 items.
9	Q -- for today's costs?	9 Q So the only one you really did was the
10	A That's right.	10 commodities, medical?
11	Q This has to be the first time that I've ever	11 A And general items.
12	seen somebody -- an economist come up with a number that	12 MR. MANNO: So you discounted \$28,000 out of
13	really doesn't have a discount rate of 1-and-a-half,	13 the \$6 to \$7 million in the plan, correct?
14	something like that, for purposes of a lifecare plan.	14 THE WITNESS: That's all she had in that
15	A Actually, I do have discounts made of 1 percent,	15 category.
16	but it's the net discount rate that is coming through.	16 MS. O'BRIEN: I don't have anything further
17	Q And I understand that. But I'm talking about	17 with regard to Mr. Holden. Do you have anything, Daryl?
18	the net discount rate, because any time I've ever in my	18 MR. FUCHIHARA: No, I don't. Thanks.
19	31 years of practice had a lifecare plan involved in a	19 MS. O'BRIEN: Okay. I'm almost done, believe
20	case, the economist has always discounted the number.	20 it or not. This one's going to go really fast.
21	You don't do that in this case.	21 MR. MANNO: Off the record a second.
22	A I do discount the number.	22 (Recess was taken.)
23	Q You don't discount the number such that there's	23 BY MS. O'BRIEN:
24	any kind of reduction in the value of the future health	24 Q So let's go on to Pekkala. We have the same
25	and medical care costs?	25 evaluatee form, right?

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1 A Yes, and this one I think you marked earlier.	1 these are high school or not. On the high school
2 There was one you marked very early on.	2 scholastic record it indicates grades for 9th grade --
3 Q It wasn't Perrin's?	3 Q Sir, let me show you what's been marked Exhibit
4 A No, no. There was one -- For example, yes, you	4 18. It's a little bigger, and there is -- You will see
5 marked -- No, I'm sorry, you might have been right. No,	5 if you page through it there is some grade school,
6 there it is. The very bottom one is Brandon Pekkala's,	6 middle school, and I think like the fourth page is the
7 Exhibit 6.	7 high school.
8 Q Oh, yes, great. Thank you so much. So I'll let	8 A Right, that's the one I was trying to sort out.
9 you -- You have your own version, but Exhibit 6 is the	9 I see -- Like the top left-hand corner is 9th grade.
10 evaluatee form for Brandon Pekkala?	10 The top right-hand corner seems to be 9th grade. The
11 A That's right.	11 bottom left-hand corner is -- it might be 11th grade,
12 Q Thank you. You noted on the first page that he	12 but I don't know what the bottom right-hand corner is.
13 attended special education classes. Do you know what	13 So I don't see anything that talks about 10th grade or
14 for?	14 12th grade.
15 A I don't recall. I believe he did discuss those	15 Q Do you know that Mr. Pekkala was sent away to
16 in his deposition, but I don't recall.	16 some other --
17 Q Have you seen his education records as to how	17 A Yes, I know that he went to an alternative high
18 many classes he had of special education?	18 school, and that -- I don't have the name of that.
19 A I do have the education records. Bear with me.	19 Somewhere in there I know I've seen it.
20 I don't know -- In terms of high school -- Oh, wait. I	20 Q Why did --
21 do have high school. Here we go.	21 A Oh, there it is. Riverside Alternative High
22 (Document marked as Deposition	22 School, and this is not -- Oh, this isn't Riverside.
23 Exhibit 18 for identification.)	23 Okay. That's why.
24 Q I'll show you Exhibit 18. It might help.	24 Q Why did he go to an alternative high school?
25 A It looks like -- I'm trying to tell whether all	25 A Behavioral problems.
Page 176	Page 177
1 Q Okay. Such as?	1 in 2018.
2 A Acting up, as he described in his deposition,	2 A Yes.
3 being the class clown.	3 Q Okay. He's had drug violations, disorderly
4 Q Do you know that his mom sent him there because	4 conduct?
5 he was huffing gasoline on a regular basis and was	5 A Yes.
6 addicted to huffing gasoline?	6 Q And that's what he reported to you?
7 A No.	7 A Correct.
8 Q How about huffing bottles of Glade and bottles	8 Q Going back to my question in high school, do you
9 of Pledge?	9 know why he had special education classes?
10 A No.	10 A No.
11 Q You didn't know that, and that's the reason that	11 Q Do you know what kind of classes those were at
12 he was sent away?	12 all?
13 A I didn't.	13 A Well, again, that's going back to the sheet that
14 Q Do you know whether he had any addictions during	14 I was trying to decipher. They don't identify the type
15 that time to anything else?	15 of class they are. All they say is special ed.
16 A No.	16 Q And what kind of classes can special ed be?
17 Q Do you know whether he has an alcohol	17 A It can be any number of things, depending upon
18 dependency?	18 where the person has limitations. It could be having to
19 A No.	19 do with mathematics, with English, with any of the core
20 Q That would be relevant in determining his	20 requirements of a high school degree.
21 worklife, correct?	21 Q And if he had limitations, would you want to
22 A Potentially, but I don't know whether that it	22 know what those were?
23 would. What would be relevant would be any limitations	23 A Not necessarily. I mean, he's out working
24 that stemmed from them.	24 productively as a boilermaker. So the academic
25 Q Well, and we know that he's had a DUI at least	25 requirements in high school obviously didn't impede him

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1 from getting the boilermaker journeymanship, and I don't 2 project them to having any impact on him being a 3 boilermaker.	1 Q Did you see any results of testing that would 2 demonstrate tremors in his arms and hands? 3 A No. Dr. Santa Maria did not indicate anything 4 in the testing I see from her as far as a decrease in 5 the manual dexterity.
4 Q But you don't know whether those limitations 5 might affect his worklife expectancy because you don't 6 know what the limitations are?	6 Q Or him. 7 A I'm sorry, I did that again. I'm sorry, that 8 she didn't. I missed it. Impaired to borderline in 9 finger tapping group peg process. So that that would 10 indicate some difficulty in manual dexterity. It 11 doesn't necessarily break it out to the tremors and 12 things.
10 Q Okay. But you don't know that? 11 A I have seen no indication from the review by Dr. 12 Santa Maria.	13 Q You didn't see her -- You didn't see him report 14 tremors in his hands? 15 A I didn't.
13 Q Right. But we know that there was something in 14 his records; you just didn't explore what that 15 limitation was?	16 Q Then the next page is talking about pre-existing 17 limitations. And I think we've touched on that a bit 18 earlier, right?
16 A That's right.	19 A We did.
17 Q Going down, he says he has trouble with tremor 18 in his arms and hands when he's doing physical work.	20 Q Okay. In 2004 he had -- Strike that. 21 In 2013 he ruptured disks in his back --
19 A What page are you on?	22 A Yes.
20 Q I'm sorry, page 2.	23 Q -- at Erickson Logging. 24 Did you factor that in to worklife expectancy?
21 A Okay. Yes.	25 A Again, from his self-report, after treatment for
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1 that, he had no ongoing limitations and I saw nothing 2 that indicated that he would.	1 A Yes.
3 Q What was his treatment for ruptured disks?	2 Q Okay. You didn't see that?
4 A I don't recall. I know it was discussed in his 5 deposition, on page 119 of his deposition. Actually, 6 that's where they discuss -- he discussed the injury, 7 but I don't see where there was a follow-up discussion 8 about treatment for the disk. It then goes into other 9 entries it looks like after that. So I don't know.	3 A That's right.
10 Q As an expert, a vocational expert, do you handle 11 cases where people with ruptured disks in their back 12 have some shortened worklife capacity?	4 Q You'd want to see that if there is one that 5 exists?
13 A Yes, there's a medical opinion that at maximum 14 medical improvement those ruptured disks result in 15 permanent limitations.	6 A If there is long-term permanent limitations, 7 yes.
16 Q Did you ask to see any of the medical records to 17 see if there was some kind of permanency put on 18 Mr. Pekkala?	8 Q Okay. And did you ask him whether he collected 9 any worker's comp for that injury?
19 A I asked in the information requested from -- 20 from Rapoport's office for any relevant medical 21 opinions.	10 A I did not, no.
22 Q You would expect that if there is a worker's 23 comp injury, that there would be some kind -- some kind 24 of report from a doctor with regard to a limitation from 25 ruptured disks in a back?	11 Q What about the injury to his left hand? 12 Lacerated two fingers. Was that work related?
	13 A It was.
	14 Q And did he collect anything for worker's comp 15 for that?
	16 A He may have.
	17 Q And was there any kind of permanency put on that 18 injury?
	19 A To my knowledge, no.
	20 Q You didn't see the records anyway?
	21 A That's right.
	22 Q It says under Work off work 3-8-16 to 4-19-16.
	23 Did you factor that in to your evaluation?
	24 A It depends on which analysis we're looking at.
	25 The analyses that I do that factor only worklife in does

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1 not factor that in at all. But for the analyses that I 2 do that also factor earnings in, it would have that in 3 there implicitly, in that I show the start date of my 4 analysis in January of 2016. So I show the full year of 5 2016, but then back out what he actually earned during 6 that year. So if his earnings were reduced for that 7 period that I missed, then that would have that in as 8 part of that loss.	1 <b>post-injury?</b> 2 A From -- Bear with me. Here it is. Let's see. 3 For 2016 that comes from his wages, his W2, of \$66,085. 4 But then I subtract what he showed on his tax return 5 for unreimbursed expenses of 25,836. So the net is what 6 you see there of 40,249.
9 Q Do you know whether he was paid for that month? 10 A I don't.	7 Q Where were you looking at for that? On your 8 sheet cheat? 9 A Actually, no, that comes from that supporting 10 computations document that I did for all three of them. 11 But from the cheat sheet you can also decipher that. 12 If you looked on page 2 of the cheat sheet, 13 there the 2016 tax return shows earnings of the \$66,000 14 and the unreimbursed expenses of the 25,836.
11 Q That would be important to know, right? 12 A No, because if he was paid for that month, then 13 it would be included in the earnings I'm subtracting.	15 Q And the 2017 tax returns show wages of \$49,888. 16 Did he have any unemployment compensation in there? 17 A It wouldn't be in that number. But your 18 question I think is did he have any that year, and that 19 answer is yes.
14 Q Can you tell me what page you're on? 15 A For this particular one I'm on page 46. 16 Q Okay. And we're looking at the earnings 17 reduction -- 18 A Yes. 19 Q -- for 2016? 20 A So there on the pre-injury side showing what his 21 average earnings had been for 2015, '16, adjusted for 22 unreimbursed expenses, and then for post-injury showing 23 what his actual earnings were just for 2016 as a 24 reduction. 25 Q And where do you get those numbers from for the	20 Q And how much is that? 21 A 13,000. 22 Q Okay. So if you added those two together, is he 23 making pretty much the same that he made in 2016? 24 A If you added those together, which I would not 25 do, but -- No, because if I did the same thing for 2016,
Page 184	Page 185
1 his earnings that year would have been \$76,000. 2 Q And is he working now that you know of? 3 A Or at least at the time of my interview. Oh, 4 that's right, he was in Hawaii at the time I interviewed 5 him and working there. 6 Q Okay. So at least based upon the numbers that 7 you have here, he had a great year in 2016 despite the 8 exposure to lead? 9 A He had an okay year, but it's down from what he 10 had been earning on his historical average. 11 Q So in 2014 he earned 33,000? 12 A I'm sorry, '14. You're on the cheat sheet. 13 Okay. So in 2014, \$33,000, but that's before adjusting 14 it for the fact that he had a big reduction for 15 apprenticeship. 16 Q And then 2015, 51,065. So he's going up? 17 A Yes. 18 Q And then 2016, 66,085? 19 A That's right. 20 Q And then 2017, he's at 49,888. Why? 21 A He's not working as much. Not as much work 22 available. 23 Q And did you ask him about that? Did it have 24 anything to do with his condition or his injuries that 25 he claims?	1 A Well, his statement there is that he's not as 2 able to work as much, as much overtime, that he's got 3 extreme fatigue. He talked about that at his 4 deposition. Loss of energy. So, to some degree, it 5 would have to do with how much he's able to work. 6 Q Tell me where you just said he's not able to 7 work as much. 8 A That's in the bottom of page 2 on the impact. 9 Q The bottom of page 2. Under the -- Oh, so you 10 are talking to him in 2018, but what about 2017? Did 11 you ask him specifically about 2017? 12 A I don't split it out by year. 13 Q So when he said he passed some days on job due 14 to lack of energy, you don't know whether that's for 15 2018 or 2017? 16 A My understanding is it's been since the injury, 17 but I don't attempt to break it out by year. 18 MR. MANNO: Are you aware that in 2017 he 19 worked more overtime than he ever had before? 20 THE WITNESS: No. 21 MR. MANNO: Would that change your opinion? 22 THE WITNESS: No. I'm using his actual 23 earnings to do the projections. 24 MR. MANNO: But earnings could be dependent on 25 whether there are jobs available as well, correct?

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1	THE WITNESS: That's right. That's why I did	1	Q What did he earn in 2013?
2	it two different ways. I did one that assumes his	2	A In 2013 -- Oh, I don't know. Let me see. So in
3	earnings are constant and another one that assumes that	3	2013 he wasn't working as a boilermaker yet. And I
4	the decline in his earnings that we've seen since the	4	don't have any earnings from that.
5	exposure is due to the injury.	5	The first year of earnings I have for them --
6	MR. MANNO: So if he's working 469 overtime	6	And, I'm sorry, in 2013 he was unemployed, so he had --
7	hours between 2016 and '17, that's showing that he's	7	His last work before that was at Erickson Logging, and
8	working a pretty substantial amount of overtime, right?	8	that ended in 2012. In 2013 he was unemployed and in
9	THE WITNESS: Yes and no. I mean, just saying	9	2014 was when he started as a boilermaker.
10	the number of overtime hours doesn't talk about the	10	Q Why was he unemployed?
11	total number of hours he's working. So it could be that	11	A He was unable to find employment after losing
12	he's working fewer days in total and then trying to get	12	the job as a process operator.
13	overtime in, which is a lot different from working fewer	13	Q Is that what he told you?
14	overtime and working all year round.	14	A Yes.
15	MR. MANNO: But if he's working fewer days in	15	Q Is that noted some place?
16	total and getting more overtime in, that would not	16	A That's why there's a gap in the history there on
17	reflect fatigue, correct?	17	page 2 where I show Erickson Logging for 2012.
18	THE WITNESS: Yes.	18	Q Could it be -- Could it be because of his injury
19	MR. MANNO: Well, it could also reflect there	19	and the slipped disks in his back?
20	are less jobs available, right?	20	A Not -- It could be, but not to my knowledge.
21	THE WITNESS: It could, and that's why, again,	21	Q You have no idea?
22	as I said, I'm doing it two different ways: One	22	A That's right.
23	assuming that it doesn't impact his earnings and one	23	Q So based upon your -- the evaluation, does
24	assuming that the decline is due to the injury.	24	Mr. Pekkala fall in the non-severe cognitive disability?
25	BY MS. O'BRIEN:	25	A Yes.
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1	Q And so he falls in that non-severe cognitive	1	Q Okay. And so we know even with this alleged
2	disability despite the fact that he's been able to	2	disability he's able to attain journeymanship and he's
3	achieve journeyman since this incident?	3	getting good reviews as an apprentice to reach that?
4	A Yes.	4	A Yes.
5	Q Okay. What did he have to do to attain	5	Q And so when Dr. Santa Maria says that his future
6	journeyman status with the boilermakers?	6	jobs, it's more likely that he'll have to take less
7	A Essentially continue to work until he completed	7	demanding, lower-paying welding job assignments, we know
8	that apprenticeship.	8	at least that hasn't been true since the accident?
9	Q Okay. And he was able to do that?	9	A No, we don't know that. So the welding jobs are
10	A Yes.	10	also within the boilermaker union, also within
11	Q Does that require a certain amount of work?	11	journeyman work, but it's -- She's talking about
12	A I don't know what the requirements are for their	12	potentially not being able to do as much as a
13	apprenticeship program. For most apprenticeship	13	boilermaker.
14	programs it will have a minimum number of hours that	14	Q But that hasn't been the case since 2016?
15	they have to work per year. I don't know what that	15	A That's right.
16	would be for the boilermakers.	16	Q And that's my point. At least up until now what
17	Q And do you get rated on your work?	17	Dr. Santa Maria -- and it's a he -- says, that hasn't
18	A Usually. And I did -- I don't recall whether it	18	been the case to date?
19	was this file or if I'm confusing it with another case,	19	A That's right.
20	but it seems like I did see work evaluations that	20	Q For a period of almost three years?
21	commented on how well he was doing in the	21	A Correct.
22	apprenticeship. I may be wrong. If I am, jump on me.	22	Q Almost four years. 2016 --
23	Q And was that how well he was doing even since he	23	A Oh, no, '16, '17, '18.
24	was allegedly exposed to lead?	24	Q Okay.
25	A Yes.	25	MR. MANNO: It feels like 14 years -- four

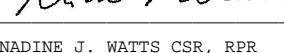
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1 years.	1 A Lawyers up until the age of 90, we still have 20
2 BY MS. O'BRIEN:	2 percent employed.
3 Q I probably asked you this. Is the worklife	3 Q Right. I have a father who just retired.
4 expectancy of a welder any lower than anyone else?	4 A Okay.
5 A No, only to the degree that welders are	5 MR. MANNO: Don't count me in that 20 percent.
6 typically of lower levels of education. So, I mean,	6 MS. O'BRIEN: Me either.
7 again, worklife expectancies are driven by levels of	7 And I guess my last question with regard to
8 education, not by occupation. And that's what we talked	8 Mr. Pekkala is you didn't based upon all his -- based
9 about before. And so to the degree that a welder is	9 upon his prior injuries and his subsequent injuries from
10 more likely to have lower levels of education, they're	10 the exposure to lead, you didn't find him with a
11 going to have a lower work level.	11 non-severe physical disability?
12 Q I mean, lower levels of education can be a	12 A That's right.
13 receptionist. Would you expect a receptionist to have	13 MS. O'BRIEN: That's all I have.
14 the same worklife as a welder?	14 CONTINUED EXAMINATION CONDUCTED BY MR. MANNO:
15 A In general, yes. But I do modify the welder	15 Q Mr. Gibson, the reason Mr. Pekkala and -- the
16 worklife, as I indicated before, by truncating the	16 reason that you believe Mr. Pekkala and Mr. Perrin have
17 period of time that I'd look at employment, both for --	17 non-severe cognitive disabilities is largely based on
18 well, for all three of them really, but truncating it at	18 their scoring on the neuropsychological testings by Dr.
19 the age of 66, where normally you would compute a	19 Santa Maria, right?
20 worklife expectancy up to the age of 89.	20 A Indirectly, but directly upon the evaluation by
21 Q That's good for you, not for me.	21 Dr. Santa Maria.
22 A Well, actually, for you even more.	22 Q And Dr. Santa Maria is using the scoring to make
23 Q I understand what you're saying.	23 that determination, correct?
24 A No, you don't. Professionals --	24 A Yes.
25 Q I do.	25 Q And the ACS data that is being used to compare
Page 192	Page 193
1 these individuals, you don't have any information about	1 A Yes.
2 any individual in that ACS survey, their test results on	2 Q When you and Ms. O'Brien were talking about
3 similar tests, correct?	3 Mr. Pekkala's special education in high school, you
4 A That's right.	4 seemed to be able to discount the special education
5 Q In fact, we're just lumping Pekkala and Perrin	5 because of his productivity as a welder, at least for
6 in with everybody else in that group with no	6 his job performance; is that right?
7 consideration of the testing results, correct?	7 A Yes, and I guess I would phrase it more that how
8 A I don't know if that's correct, because I'm	8 he did academically I'm not factoring in because his
9 considering -- I'm considering the evaluation of those	9 academics didn't come into play to his ability to become
10 test results in my placement of where they are in the	10 a journeyman -- a journeyman boilermaker.
11 continuum of disability.	11 Q Okay. So because of any academic deficiency
12 Q There's no way that you can make comparisons of	12 that he had didn't leap over to his work in becoming a
13 their test results to anyone else's test results?	13 journeyman, we're able to -- I don't want to use the
14 A Well, since I don't know anybody else's test	14 word discount, but it seems that we're able to just put
15 results, that's true.	15 those to the side; is that right?
16 Q You're just lumping them into a general	16 A Yes.
17 non-severe cognitive disability category, right?	17 Q Okay. Then why if none of these alleged
18 A And enhancing that by saying that they're	18 cognitive deficits that Dr. Santa Maria opines about are
19 halfway between non-severe and severe.	19 affecting his job performance, why are we not putting
20 Q One of the reasons why is because they're	20 that aside with his academic deficiencies?
21 working, right?	21 A I don't know that I would agree that they're not
22 A Yes.	22 impacting his job performance. As I said before, it's
23 Q Because whether somebody with a disability is	23 quite possible that they are in that he's talking about
24 working is an important factor to talk about as we	24 how they impact him on the job, and there is a noted
25 discussed earlier, right?	25 difference in how much he earned in the most recent

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1 years from how much he was earning in the earlier years 2 of his journeymanship.	1 any potential -- discount his alleged cognitive 2 deficits. Do you see the inconsistency?
3 And, further, the opinions of Dr. Santa Maria 4 indicate that the limitations that he's exhibiting -- 5 I'm trying to remember her words -- they would, as you 6 would expect, compromise the efficiency in work duties 7 with associated risks.	3 A No, because I don't see anything that indicates 4 that he had a cognitive disability beforehand. He had 5 some difficulties with academics. That's not a 6 cognitive disability.
8 Q Is there one example? And we can go through 9 them because I have them. Is there one example in the 10 performance reviews that he's received, even currently 11 into 2018, that he is not being efficient as a welder?	7 Q Have you seen his writing and his spelling?
12 A No, but none of those are comparing him to how 13 efficient he was as a welder before the exposure.	8 A No.
14 Q That's not true. We can look at his prior 15 records and see that he actually gets worse scores 16 before, which, by the way, is logical because it's the 17 beginning of his apprenticeship program, right?	9 Q Okay. But going back to my point, we don't know 10 if any of that actually impacted what his total ceiling 11 could have been, right, because he never welded before?
18 A Right. And my point is nothing rates him where 19 he has the same person reviewing him, looking at his 20 abilities before and what his abilities are now.	12 I guess here's where I'm going with this. We 13 don't have any evidence of welding, taking aside the 14 education, his cognitive, or his education defects?
21 Q But you don't know what his abilities would be 22 if he didn't have an academic cognitive disability.	15 That's a really bad question. Let me strike that. Let 16 me strike that.
23 Earlier we discounted that because we said he's 24 doing fine in his job. And now we have evidence he's 25 doing fine in his job, but we're refusing to discount	17 Actually, I think I'm good.
1 Q I want to go back to some statements in your 2 reports. I just want to ask you -- And these are 3 similar to what we talked about earlier.	18 A You mean no question?
4 Under the reported problems, he has constant 5 pain in there. Is there any way for you to determine 6 whether the constant pain is the cause of the number of 7 actual -- the number of car accidents he's been involved 8 versus lead exposure? There's no way for you to parse 9 that out, correct?	19 Q No question. Well, let me think about that for 20 a second.
10 A I mean, according to -- He reported no ongoing 11 pain before the exposure. So, I mean, anything -- 12 That's the only way I can parse it out, is not having a 13 report of pain before.	21 You don't disagree that Mr. Pekkala has a 22 number -- in fact, almost all very high scores for his 23 welding after Fraser Shipyards into 2018 where we have 24 records, right?
14 Q He was in a pretty substantial car accident 15 though in between, right?	25 A I don't.
16 A Oh, okay. So you're talking about the ones 17 after the --	Page 196
18 Q Right, right.	1 A True. I can't answer for him.
19 A I thought you were going back to 2004 and -- 20 Okay. But he's reporting also from those car accidents 21 that he had no long -- no ongoing after the recovery 22 from the car accident pain.	2 Q So -- And, by the way, talking about the car 3 accident, do you know the circumstances of that car 4 accident?
23 Q How could he know if it was pain from the car 24 accident or pain from the lead? He's just reporting 25 constant pain.	5 A You mean the one in November of last year?
	6 Q Yes.
	7 A I don't.
	8 Q Do you know that he had been drinking before 9 getting in the car?
	10 A Is that the rollover accident?
	11 Q That's the rollover I believe.
	12 A Okay. Yes.
	13 Q Did you factor Mr. Pekkala's history of meth 14 into your analysis?
	15 A I did not.
	16 Q And the same thing we talked about earlier with 17 Mr. Holden, but certainly the use of meth could affect 18 someone's motivation or ability to work in the future, 19 correct?
	20 A It can.
	21 Q How about his use of cocaine?
	22 A No. The same answer.
	23 Q The same answer. Just circling back on the 24 education records, I don't think this point was made 25 out, but his class rank was listed as 107 out of 109,

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		Page 198		Page 199
1	correct?		1	MS. O'BRIEN: All right.
2	A Yes.		2	MR. KOJS: I'm good.
3	Q That seems pretty low from an academic		3	MS. O'BRIEN: We're out of here. Thank you.
4	standpoint, right?		4	(Whereupon, the deposition concluded
5	A Definitely.		5	at 5:45 p.m.)
6	MR. MANNO: I think that's all I have.		6	
7	CONTINUED EXAMINATION CONDUCTED BY MS. O'BRIEN:		7	
8	Q I just have one hypothetical. If someone has a		8	
9	hand tremor say for the last 20 years, can they be a		9	
10	welder?		10	
11	A I'm sorry, for the last 20 years?		11	
12	Q Well, let's just say they have had a hand tremor		12	
13	for a long, long time. Can they be a welder?		13	
14	A I guess it depends how significant the tremor is		14	
15	and how the tremor manifests itself or can be		15	
16	controlled.		16	
17	So, for instance, if using two hands to hold		17	
18	the torch could mediate or alleviate that tremor, then		18	
19	obviously it's not going to matter that much. But if		19	
20	the tremor is going to impact your ability to hold the		20	
21	torch constant, then I would expect that they would have		21	
22	difficulties maintaining employment as a welder.		22	
23	MS. O'BRIEN: That's all the questions I have.		23	
24	Do you have any, Daryl?		24	
25	MR. FUCHIHARA: I do not.		25	
		Page 200		Page 201
1	STATE OF ILLINOIS )		1	Witness my official signature and seal as
	) SS:		2	Notary Public in and for Cook County, Illinois on the
2	COUNTY OF C O O K )		3	2nd day of October, A.D.2018.
3			4	
4	The within and foregoing deposition of the		5	NADINE J. WATTS CSR, RPR
5	forementioned witness was taken before NADINE J.		6	Notary Public
6	WATTS, C.S.R., R.P.R. and Notary Public, at the place,			License No. 084-002736
7	date and time aforementioned.			
8	There were present during the taking of the		7	
9	deposition the previously named counsel.		8	
10	The said witness was first duly sworn and was		9	
11	then examined upon oral interrogatories; the questions		10	
12	and answers were taken down in shorthand by the		11	
13	undersigned, acting as stenographer and Notary Public;		12	
14	and the within and foregoing is a true, accurate and		13	
15	complete record of all of the questions asked of and		14	
16	answers made by the forementioned witness, at the time		15	
17	and place hereinabove referred to.		16	
18	Before completion of the deposition, review of		17	
19	the transcript { } was {X} was not requested. If		18	
20	requested, any changes made by the deponent (and		19	
21	provided to the reporter) during the period allowed are		20	
22	appended hereto.		21	
23	The undersigned is not interested in the		22	
24	within case, nor of kin or counsel to any of the		23	
25	parties.		24	
			25	

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\$	<b>\$600</b> 149:9	<b>100</b> 162:4	<b>16th</b> 38:12 61:3
<b>\$1,100</b> 15:12	<b>\$66,000</b> 183:13	<b>107</b> 197:25	<b>17</b> 36:20 75:10 89:13 91:8 168:9,15 186:7 189:23
<b>\$1,500</b> 17:20,21	<b>\$66,085</b> 183:3	<b>109</b> 197:25	<b>17,350</b> 88:24 89:1
<b>\$1.3</b> 142:11 143:23	<b>7</b> 173:13	<b>10th</b> 175:13	<b>17.6</b> 103:24
<b>\$10,000</b> 137:21 140:5	<b>\$76,000</b> 184:1	<b>11</b> 10:13 122:16,17 164:2	<b>18</b> 88:20 89:13 174:23,24 175:4 189:23
<b>\$10,185</b> 137:18	<b>\$84,190</b> 81:25	<b>119</b> 180:5	<b>19</b> 58:15,16,17,21
<b>\$14.20</b> 113:3	<b>\$9,405</b> 137:11,12	<b>11th</b> 175:11	<b>1979</b> 6:8
<b>\$16,000</b> 145:4	<b>0</b>	<b>12</b> 139:11,12	<b>1996</b> 40:21
<b>\$160</b> 165:14	<b>0.8</b> 83:3	<b>12.8</b> 113:8 114:3	<b>1999</b> 40:20
<b>\$18,000</b> 113:14 114:1	<b>02</b> 81:3	<b>120</b> 146:5,6	
<b>\$2,500</b> 15:15	<b>06</b> 49:17	<b>12th</b> 175:14	<b>2</b>
<b>\$23,000</b> 144:22	<b>1</b>	<b>13</b> 40:7 42:2,9 47:24 58:18 87:13 134:10,13 148:21, 23,25 165:16	<b>2</b> 8:12,14 12:18 42:9 48:10 68:14 78:20 79:3 82:21 106:7 123:12 149:6 178:20 183:12 185:8,9 187:17
<b>\$28,000</b> 173:12	<b>1</b> 5:24 6:1 24:13 41:12 78:21 81:22 132:6 141:10 172:15	<b>13,000</b> 183:21	<b>2,500</b> 16:17 17:4
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